

LOCAL GOVERNMENT TRANSITION ACT 209 OF 1993

[ASSENTED TO 20 JANUARY 1994]

[DATE OF COMMENCEMENT: 2 FEBRUARY 1994]

(Unless otherwise indicated)

(English text signed by the State President)

as amended by

Proclamation R129 of 1994

Local Government Transition Act Amendment Act 34 of 1994

Local Government Transition Act Amendment Proclamation R174 of 1994

Local Government Transition Act Amendment Proclamation R35 of 1995

Local Government Transition Act Second Amendment Proclamation R54 of 1995

Local Government Transition Act Third Amendment Proclamation R58 of 1995

Local Government Transition Act Fourth Amendment Proclamation R59 of 1995

Local Government Transition Act Fifth Amendment Proclamation R65 of 1995 (as corrected by Government Notice R1038 of 1995)

Local Government Transition Act Amendment Act 61 of 1995

Local Government Transition Act Second Amendment Act 89 of 1995

Local Government Transition Act Amendment Act 12 of 1996

Local Government Transition Act Second Amendment Act 97 of 1996

Organised Local Government Act 52 of 1997

Local Government: Municipal Demarcation Act 27 of 1998

Local Government: Municipal Finance Management Act 56 of 2003

Prevention and Combating of Corrupt Activities Act 12 of 2004

Regulations under this Act

BY-ELECTIONS AND VOTERS' ROLLS

DETERMINATION AND UTILISATION OF EQUITABLE CONTRIBUTIONS REGULATIONS

DISPENSING OF TENDERS REGULATIONS

FINANCIAL REPORTING BY MUNICIPALITIES

PUBLICATION OF PARTICULARS OF THE REMUNERATION OF CERTAIN MUNICIPAL OFFICIALS

REGULATIONS REGARDING THE ELECTION OF CERTAIN MEMBERS OF TRANSITIONAL METROPOLITAN COUNCILS AND DISTRICT COUNCILS

NB: See Proclamation R160 in *Government Gazette* 16049 of 31 October 1994 concerning the extent of the assignment of the administration of this Act to the provinces.

ACT

To provide for revised interim measures with a view to promoting the restructuring of local government, and for that purpose to provide for the establishment of Provincial Committees for Local Government in respect of the various provinces; to provide for the recognition and establishment of forums for negotiating such restructuring of local government; for the exemption of certain local government bodies from certain provisions of the Act; for the establishment of appointed transitional councils in the pre-interim phase; for the delimitation of areas of jurisdiction and the election of transitional councils in the interim phase; for the establishment of transitional rural local government structures; for the issuing of proclamations by the MECs of the various provinces; for the establishment of Local Government Demarcation Boards in respect of the various provinces; and for the repeal of certain laws; and to provide for matters connected therewith.

[Long title substituted by Proclamation R65 of 30 June 1995 and by s. 18 (1) of Act 89 of 1995 and amended by s. 13 (a) of Act 97 of 1996.]

PART I

APPLICATION OF ACT (ss 1-2)

1 Definitions

(1) In this Act, unless the context indicates otherwise-

'Administrator'.....

[Definition of 'Administrator' substituted by Proclamation R129 of 15 July 1994 and by s. 1 (1) (a) of Act 89 of 1995 and deleted by s. 1 (a) of Act 97 of 1996.]

'Board'

[Definition of 'Board' deleted by s. 1 (a) of Act 97 of 1996.]

'**Committee**' means the Provincial Committee for Local Government established for a province in terms of section 3 (1) (a);

'**interim phase**' means the period commencing on the day after elections are held for transitional councils as contemplated in section 9, and ending with the implementation of final arrangements to be enacted by a competent legislative authority;

'**local government body**' means any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961), and includes-

(a)

[Para. (a) deleted by Proclamation R129 of 15 July 1994 and by s. 1 (1) (b) of Act 89 of 1995.]

- (b) any local authority as defined in section 1 (1) of the Black Local Authorities Act, 1982 (Act 102 of 1982);
 - (c) any local government body established by virtue of the provisions of section 30 (2) (a) of the Black Administration Act, 1927 (Act 38 of 1927), or any body performing local government functions under the laws referred to in section 15 (1) of this Act;
 - (d) a board of management or board referred to in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987);
 - (e) any committee referred to in section 17 of the Promotion of Local Government Affairs Act, 1983 (Act 91 of 1983);
 - (f) any local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act 94 of 1987);
 - (g) the Local Government Affairs Council established by section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act 84 of 1989);
 - (h) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act 109 of 1985);
 - (i) any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990);
 - (j) any joint decision-making body, joint local authority or single local authority referred to in paragraphs (c), (e) and (f) of section 8 of the Interim Measures for Local Government Act, 1991 (Act 128 of 1991), and established by proclamation issued under that Act;
 - (jA) any other local government body established by or under any law in force in an area which forms part of the national territory referred to in section 1 of the Constitution;
- [Para. (jA) inserted by Proclamation R129 of 15 July 1994 and by s. 1 (1) (c) of Act 89 of 1995.]
- (k) any person, institution or body declared under subsection (2) to be a local government body for the purposes of this Act;

'**local government co-ordinating committee**' means a joint committee established to exercise and perform during the pre-interim phase specific powers and duties of local government bodies, as contemplated in section 7 (1) (c);

'**MEC**' means the member of the executive council responsible for local government in the province concerned;

[Definition of 'MEC' inserted by s. 1 (b) of Act 97 of 1996.]

'**metropolitan area**' means any area-

- (a) comprising the areas of jurisdiction of multiple local governments;
- (b) which is densely populated and has an intense movement of people, goods and services within the area;
- (c) which is extensively developed or urbanized and has more than one central business district, industrial area and concentration of employment; and
- (d) which, economically, forms a functional unit comprising various smaller units which are interdependent economically and in respect of services;

'**Minister**' means the Minister for Provincial Affairs and Constitutional Development;

[Definition of 'Minister' substituted by Proclamation R129 of 15 July 1994 and by s. 1 (d) of Act 89 of 1995.]

'**negotiating forum**' means any negotiating forum referred to in section 6;

'**Official Gazette**'

[Definition of 'Official Gazette' deleted by s. 1 (c) of Act 97 of 1996.]

'**pre-interim phase**' means the period commencing on the date of commencement of this Act and ending with the commencement of the interim phase;

'**province**' means a province mentioned in section 124 (1) of the Constitution;

[Definition of 'province' substituted by Proclamation R129 of 15 July 1994 and by s. 1 (1) (e) of Act 89 of 1995.]

'**provincial administration**' means the provincial administration established for a province by the Public Service Act, 1994 (Proclamation 103 of 1994);

[Definition of 'provincial administration' inserted by Proclamation R129 of 15 July 1994 and by s. 1 (1) (f) of Act 89 of 1995.]

'**Provincial Gazette**' means the *Provincial Gazette* of the province concerned;

[Definition of '*Provincial Gazette*' inserted by s. 1 (d) of Act 97 of 1996.]

'Self-governing Territory'

[Definition of 'Self-governing Territory' deleted by Proclamation R129 of 15 July 1994 and by s. 1 (1) (g) of Act 89 of 1995.]

'town clerk', in relation to a local government body, transitional council or transitional metropolitan substructure, means the chief executive officer of such local government body, transitional council or transitional metropolitan substructure regardless of the designation of the post occupied by that officer;

'transitional council' includes a local government co-ordinating committee, a transitional local council and a transitional metropolitan council for the pre-interim phase, and a transitional local council and a transitional metropolitan council for the interim phase;

'Transitional Executive Council' means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act 151 of 1993);

'transitional local council' means a single council as contemplated in section 7 (1) (b) (i) for the pre-interim phase, and as contemplated in section 8 (1) (a) for the interim phase;

'transitional metropolitan council' means the council as contemplated in section 7 (1) (b) (ii) for the pre-interim phase, and as contemplated in section 8 (1) (b) for the interim phase;

'transitional metropolitan substructure' means a primary local authority for a metropolitan area of local government as contemplated in section 7 (1) (b) (ii) for the pre-interim phase, and as contemplated in section 8 (1) (b) for the interim phase.

(2) The MEC may, in respect of the province for which he or she is appointed, by notice in the *Provincial Gazette*-

(a) declare any person who or institution or body which in his or her opinion performs local government functions in respect of a particular area;

(b) if he or she deems it in the interest of the persons residing within the area of jurisdiction of a traditional authority as contemplated in section 181 of the Constitution of the Republic of South Africa, 1993, declare such traditional authority,

to be a local government body for the purposes of this Act.

[Sub-s. (2) amended by s. 13 (a) and (b) of Act 97 of 1996.]

2 Application of this Act

(1) This Act shall apply throughout the Republic.

(2) In the event of a conflict between this Act and any other law in force in a territory in which this Act did not apply before 27 April 1994, this Act shall prevail.

[S. 2 substituted by Proclamation R129 of 15 July 1994 and by s. 2 (1) of Act 89 of 1995.]

PART II

PROVINCIAL COMMITTEE FOR LOCAL GOVERNMENT (ss 3-4)

3 Establishment of Provincial Committee for Local Government

(1) (a) The Transitional Executive Council shall establish for each province as contemplated in section 124 of the Constitution of the Republic of South Africa, 1993, a committee to be known as the Provincial Committee for Local Government, which shall exercise the powers and perform the duties conferred or imposed upon it by this Act.

(b) For as long as the Transitional Executive Council is in existence, the Committee shall, subject to the provisions of this Act, be deemed to be a subcommittee contemplated in section 7 (1) (h) of the Transitional Executive Council Act, 1993 (Act 151 of 1993).

(c)

[Para. (c) deleted by s. 1 of Act 61 of 1995].

(2) The Committee shall be broadly representative of stakeholders in local government in the province concerned and consist of not more than six members initially appointed by the Transitional Executive Council: Provided that-

(a) a member shall have knowledge of matters concerning local government and reside within the province concerned; and

(b) not more than one representative of any such stakeholder shall be appointed as a member of the Committee.

(3) The Committee shall from among its members appoint a chairperson and a vice-chairperson and other office-bearers either on a permanent or rotational basis .

(4) When the chairperson is absent or unable to perform his or her functions in terms of this section, the vice-chairperson shall act in his or her stead, and while so acting he or she may exercise all the powers and shall perform all the duties of the chairperson.

(5) (a) A member of the Committee shall hold office as a member at the Minister's pleasure.

(b) Any vacancy in the membership of the Committee arising for any reason shall be filled by a person appointed by the Minister in consultation with the Minister of Justice and after consultation with the Premier of the province concerned: Provided that any person so appointed shall have knowledge of matters concerning local government and shall

reside within the province concerned.

[Sub-s. (5) substituted by Proclamation R58 of 7 June 1995 and by s. 3 (1) (a) of Act 89 of 1995.]

(6) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act 8 of 1947), shall apply *mutatis mutandis* to the Committee in so far as they are applicable to the functions of the Committee.

(7) (a) Meetings of the Committee shall be held at such times and places as the chairperson may determine.

(b) A decision of the Committee shall be taken by a two-thirds majority of all the members referred to in subsection (2).

(c) The Committee may make rules in relation to the holding of and procedure at meetings of the Committee.

(8) (a) The conditions of service, remuneration, allowances and other benefits of the members of the Committee shall be determined by the MEC subject to such norms and standards as may be determined by the Minister of Finance.

[Para. (a) substituted by Proclamation R129 of 15 July 1994 and by s. 3 (1) (b) of Act 89 of 1995 and amended by s. 13 (a) of Act 97 of 1996.]

(b) Any member of the Committee who receives remuneration, allowances or other benefits by virtue of his or her employment by or position in any government or public service or any transitional executive structure and who continues to receive such remuneration, allowances or other benefits while serving on the Committee shall not receive any remuneration, allowance or other benefits in terms of paragraph (a), except to the extent required to place such member in the position in which he or she would have been were it not for such employment or position.

(9) (a) The Committee may appoint one or more subcommittees consisting of such members of that Committee and such other persons as the Committee may deem fit, to serve on any such subcommittee to advise and make recommendations in writing to the Committee regarding the exercise of any power or the performance of any duty conferred or imposed upon the Committee by this Act, subject to the directions of the Committee.

(b) Where more than one member of the Committee serves on a subcommittee, the Committee shall designate one of those members as chairperson of the subcommittee, but where only one member of the Committee serves on a subcommittee, such a member shall be the chairperson thereof.

(c) The provisions of subsections (6), (7) and (8) shall apply *mutatis mutandis* in relation to a subcommittee appointed under paragraph (a) and to any member of such subcommittee.

(10) The administrative work incidental to the performance of the functions of the Committee shall be performed by officers of the respective provincial administrations designated for this purpose by the Director-General concerned.

4 MEC shall act with concurrence of Committee

(1) Where the MEC is required to exercise any power or perform any duty conferred or imposed upon him or her by this Act, he or she shall act with the concurrence of the Committee.

(2) (a) The MEC shall in writing notify the Committee of his or her intention to exercise any power or to perform any duty conferred or imposed upon him or her by this Act: Provided that such notice shall set out the views of the MEC on the matter.

(b) On receipt of a notice referred to in paragraph (a), a meeting of the Committee shall be held within a period determined by the MEC for the purpose of furnishing the MEC with the written decision of the Committee in regard to the exercise of a power or the performance of a duty referred to in paragraph (a): Provided that where such meeting cannot be held as determined, the members of the Committee shall consider the notice individually and shall without unreasonable delay furnish the chairperson of the Committee in writing with his or her decision in regard to the exercise of a power or the performance of a duty referred to in paragraph (a), in which case the decision of the majority of the members shall constitute the decision of the Committee;

[Para. (b) substituted by Proclamation R174 of 30 November 1994 and by s. 4 (1) (a) of Act 89 of 1995.]

(3) (a) Where the MEC and the Committee do not concur with regard to the exercise of a power or the performance of a duty referred to in subsection (2) (a), the MEC shall refer the matter to the Special Electoral Court established by section 32 of the Independent Electoral Commission Act, 1993 (Act 150 of 1993), for decision, and may only proceed to exercise such power or perform such duty, as the case may be, if or in so far as the Special Electoral Court authorizes him or her to do so.

(b) When the MEC refers any matter to the Special Electoral Court in terms of paragraph (a), that Court shall as soon as practicable consider the matter and give its decision, having due regard to-

- (i) the views expressed on the matter by the MEC in his or her written notice to the Committee referred to in subsection (2) (a);
- (ii) the decision of the Committee referred to in subsection (2) (b);
- (iii) the written representations of any local government body, transitional council or transitional metropolitan substructure which may be affected by the exercise of a power or the performance of a duty referred to in subsection (2) (a); and
- (iv) any other matter considered by the Special Electoral Court to be relevant for its decision.

(c) The Special Electoral Court may make such findings and give such instructions or directions as it may consider appropriate in the circumstances.

(d) The findings of the Special Electoral Court shall be final and binding and shall not be subject to further appeal.

(4) (a) Any question relating to the exercise of a power or the performance of a duty by the MEC or the Committee as contemplated in this Act or its objects, or the failure to exercise such power or perform such duty properly, expeditiously or at all, and which may negatively affect an election in terms of this Act, may be referred to the Chairperson of the Special Electoral Court by at least one half of the members of the Committee.

(b) A referral contemplated in paragraph (a) shall be in writing and set out the reasons therefor.

(c) If the Special Electoral Court is *prima facie* of the opinion that the question is one referred to in paragraph (a), that Court shall as soon as practicable consider the matter and give its decision, having due regard to any matter that the Court may deem relevant for its decision.

(d) The Special Electoral Court may make such decisions and give such orders or directions as it may consider appropriate in the circumstances, including-

- (i) an order for compliance with any provision of this Act, subject to the directions of the Court, including timeframes;
- (ii) an order setting aside any decision; and
- (iii) an order, where appropriate, that a matter shall be referred to it in terms of subsection (3).

[Sub-s. (4) added by s. 4 (1) (b) of Act 89 of 1995.]

[S. 4 amended by s. 13 (a) of Act 97 of 1996.]

PART III

EXEMPTION FROM CERTAIN PROVISIONS (s 5)

5 MEC may exempt certain local government bodies from certain provisions of Act

(1) The MEC may in writing exempt any local government body from the provisions of Part IV of this Act if the MEC is satisfied that such local government body is non-racial and inclusive and has brought about stability at local level through effective government, orderly financial management and a single local government administration.

(2) From the date of an exemption granted by the MEC as contemplated in subsection (1)-

- (a) Part IV of this Act shall not apply to an exempted local government body referred to in subsection (1), and any proclamation issued under the Interim Measures for Local Government Act, 1991 (Act 128 of 1991), whereby such local government body was established, shall, subject to the provisions of this Act, continue to be of force up to the day immediately preceding the day on which an election is held in respect of the area concerned in terms of section 9 (1); and
- (b) the provisions of section 16 of this Act shall apply *mutatis mutandis* in relation to such local government body.

[S. 5 substituted by s. 2 of Act 61 of 1995 and amended by s. 13 (a) of Act 97 of 1996.]

PART IV

PRE-INTERIM PHASE: NEGOTIATING FORUMS (ss 6-7A)

6 Recognition and establishment of forums

The MEC shall, if he or she is satisfied on a balance of probabilities on the evidence contained in a written application made to him or her by any forum established before or after the commencement of this Act, that such forum has been established substantially in accordance with the principles and procedures contained in Schedule 1, recognize such forum, whereupon such forum shall be deemed to be a negotiating forum for the purposes of this Act.

[S. 6 amended by s. 13 (a) of Act 97 of 1996.]

7 Negotiating matters

(1) Notwithstanding anything to the contrary contained in any other law, a negotiating forum shall-

- (a) negotiate with regard to the area of a forum as contemplated in paragraph 1 of Schedule 1;
- (b) subject to the principles and procedures embodied in Schedule 1, negotiate on the establishment of-
 - (i) any transitional local council for a non-metropolitan area of local government;
 - (ii) any transitional metropolitan council with transitional metropolitan substructures for a metropolitan area of local government, within the area of a forum by a proclamation contemplated in section 10 (1), as a possible option for the pre-interim period: Provided that where any such option is agreed upon, the following matters shall, where applicable, also be negotiated:
 - (aa) The powers and duties of any transitional metropolitan council and transitional metropolitan substructure: Provided that-
 - (aaa) the powers and duties of any transitional metropolitan council shall, subject to section 126 of the Constitution of the Republic of South Africa, 1993, and, in the case of the functions water and electricity, unless otherwise determined by national legislation, be at least the powers and duties listed in Schedule 2; and
 - (bbb) any transitional metropolitan council may, in its discretion, decide not to exercise any such power or perform any such duty;

- (bb) the total number of seats in a transitional local council or transitional metropolitan council and a transitional metropolitan substructure, taking the number of existing seats of all local government bodies within the area of the forum as a point of departure;
 - (cc) the nomination of persons for appointment as members of a transitional local council or transitional metropolitan council and transitional metropolitan substructure;
- (c) subject to the principles and procedures contained in Schedule 1, negotiate on the establishment of a local government co-ordinating committee for the local government bodies within the area of the forum for a non-metropolitan area of local government by a proclamation contemplated in section 10 (1), as a possible option for the pre-interim period, having certain specified powers and duties with the individual councils of the local government bodies retaining all other powers and duties within their areas of jurisdiction: Provided that where such option is agreed upon, the following matters shall also be negotiated:
- (i) The powers and duties of the local government co-ordinating committee: Provided that the powers and duties of any local government co-ordinating committee shall be at least the following powers and duties:
 - (aa) To ensure access by all persons residing within the areas of jurisdiction of the individual local government bodies to the following services: Water supply, sewerage purification, electricity if so agreed by all the individual local government bodies, refuse removal, roads and stormwater drainage, health services, emergency services, financial administration, and any other service agreed upon: Provided that if the individual local government bodies do not have the ability, jointly or severally, to ensure access to electricity themselves, the local government co-ordinating committee shall negotiate for such access thereto to be provided on its behalf by any other competent body: Provided further that any such arrangement shall not relieve the local government co-ordinating committee of its responsibilities as contemplated in this item;
 - (bb) the approval of the budget for the local government co-ordinating committee in respect of the powers and duties of the local government co-ordinating committee: Provided that-
 - (aaa) such budget shall be prepared in accordance with the applicable law;
 - (bbb) all available and applicable resources shall be utilized on an efficient and equitable basis;
 - (ccc) such budget shall at least include an amount of not less than ten per cent of the total assessment rates of the individual local government bodies for the 1993/94 budget, which shall be employed for the improvement and restoration of such services as identified and arranged in order of priority by the local government co-ordinating committee; and
 - (ddd) the local government co-ordinating committee shall receive intergovernmental grants as well as funds from the local government bodies referred to in paragraphs (h) and (i) of the definition of local government body to allocate and distribute such grants and funds to any individual local government body to address service and developmental backlogs as identified and arranged in order of priority by the local government co-ordinating committee;
 - (cc) to investigate the rationalization of the administration and personnel of the individual local government bodies in the area of the forum and, subject to applicable labour law, implement a programme of rationalization to be completed at the commencement of the interim phase;
 - (dd) to be responsible for the preparation for and the conducting of the election contemplated in section 9 (1) within its area of competence and for this purpose using the financial and other resources of its component local government bodies in addition to the financial resources referred to in paragraph (ccc) of the proviso to paragraph (bb) of the proviso to paragraph (i) of the proviso to subsection (1) (c).

[Para. (dd) added by Proclamation R174 of 30 November 1994 and by s. 5 (1) (a) of Act 89 of 1995.]

- (ii) the total number of seats in such local government co-ordinating committee and the representation on such committee of the local government bodies within the area of the forum and such other persons nominated by the forum;
- (iii) the nomination of persons for appointment as members of such local government co-ordinating committee,

and shall submit any agreement reached to the MEC before or on 30 November 1994 whereupon the MEC shall, within a period of 45 days, exercise the powers conferred upon him or her by section 10 (1) incorporating the provisions of such

agreement in the proclamation contemplated in the said section.

[Sub-s. (1) amended by Proclamation R174 of 30 November 1994 and by s. 5 (1) (b) of Act 89 of 1995.]

(2) (a) Where an agreement as contemplated in subsection (1) is not submitted to the MEC before or on 30 November 1994, the MEC shall before or on 21 December 1994 refer the matter to an arbitration committee referred to in subsection (2A).

(b) The arbitration committee concerned shall consider the matter and before or on 12 January 1995 in writing notify the MEC of the decision of the committee, whereupon the MEC shall, within a period of 30 days, exercise the powers conferred upon him or her by section 10 (1), incorporating the decision of the arbitration committee in the proclamation contemplated in the said section: Provided that where a decision of the arbitration committee is not submitted to the MEC within the period referred to in this paragraph or where the arbitration committee notifies the MEC within such period in writing that it cannot, for any reason, come to a decision, the MEC shall-

- (i) after due consideration of the negotiation process which took place in the forum; and
- (ii) in order to obtain a result which would, in the circumstances of that particular case, best give effect to the objects of this Act,

forthwith determine that the option referred to in paragraph (b) or (c) of subsection (1) shall be applied to the local government bodies in the area of the forum, and shall, within a period of 30 days, exercise the powers conferred upon him or her by section 10 (1), incorporating the provisions of such determination in the proclamation contemplated in the said section.

[Sub-s. (2) substituted by Proclamation R174 of 30 November 1994 and by s. 5 (1) (c) of Act 89 of 1995.]

(2A) (a) There is hereby established for each province one or more committees as determined by the MEC to be known as an arbitration committee or as arbitration committees.

(b) An arbitration committee shall consist of four members appointed by the MEC of whom two shall be broadly representative of the statutory component of forums in the province concerned and the other two shall be broadly representative of the non-statutory component of forums in the province concerned.

(c) (i) An arbitration committee shall appoint a chairperson who shall determine the times and places for meetings of the committee.

(ii) The majority of the members of a committee shall form a quorum for a meeting.

(iii) The decision of the majority of the members of a committee present at any meeting thereof, shall be a decision of the committee.

(iv) A committee may make rules in relation to the holding of and procedures at meetings of the committee.

(d) The administrative work incidental to the performance of the functions of an arbitration committee shall be performed by officers of the respective provincial administrations designated for that purpose by the Director-General concerned.

[Sub-s. (2A) inserted by Proclamation R174 of 30 November 1994 and by s. 5 (1) (d) of Act 89 of 1995.]

(3) Any agreement contemplated in subsection (1) shall be approved by a concurrent majority of two-thirds of both the statutory and non-statutory components of the forum: Provided that any such agreement relating to the application of the option referred to in paragraph (b) of subsection (1) to any local government body within the area of the forum concerned which, in terms of Board Notice 127 of 1993 of the Board on the Remuneration and Service Benefits of Town Clerks, as published in *Government Gazette* 15250 of 12 November 1993, is classified as a grade 8 local authority or lower, shall only be approved by a concurrent majority of four-fifths of both the statutory and non-statutory components of the forum.

[Sub-s. (3) substituted by Proclamation R174 of 30 November 1994 and by s. 5 (1) (e) of Act 89 of 1995.]

(4) For the purposes of this section, the expressions 'statutory' and 'non-statutory' shall, in relation to a forum, bear the meaning assigned to them in Schedule 1.

[S. 7 amended by s. 13 (a) of Act 97 of 1996.]

7A Powers of MEC if forum is not established or recognized

If a forum for any area has for any reason whatsoever not been established or recognized as contemplated in section 6 on 30 November 1994, the MEC may, notwithstanding anything to the contrary contained in this Act, forthwith determine that the option referred to in paragraph (b) or (c) of section 7 (1) shall be applied to the local government bodies in any such area and shall, within a period of 30 days of such determination, exercise the powers conferred upon him or her by section 10 (1), incorporating the provisions of such determination in the proclamation contemplated in the said section.

[S. 7A inserted by Proclamation R174 of 30 November 1994 and by s. 6 (1) of Act 89 of 1995 and amended by s. 13 (a) of Act 97 of 1996.]

PART V

INTERIM PHASE: TRANSITIONAL COUNCILS (ss 8-9)

8 Delimitation of areas of jurisdiction and establishment of transitional councils

(1) A transitional council for which elections shall be held as provided for in section 9, shall be known as-

- (a) a transitional local council for a non-metropolitan area of local government, which may include the area

of jurisdiction of a traditional authority contemplated in section 181 of the Constitution of the Republic of South Africa, 1993;

- (b) a transitional metropolitan council with transitional metropolitan substructures for a metropolitan area of local government.

(2) After due consideration of-

- (a) the written representations of a transitional council or transitional metropolitan substructure, if any, which is established at that stage and which may be affected;

[Para. (a) substituted by Proclamation R174 of 30 November 1994 and by s. 7 (1) (a) of Act 89 of 1995.]

- (b) the advice and written recommendations of the Board, the MEC shall-
- (i) delimit or re-delimit the areas of jurisdiction of transitional councils and transitional metropolitan substructures;
 - (ii) determine or re-determine the powers and duties of any transitional metropolitan council and transitional metropolitan substructure: Provided that-
 - (aa) the powers and duties of any transitional metropolitan council shall, subject to section 126 of the Constitution of the Republic of South Africa, 1993, and, in the case of the functions water and electricity, unless otherwise determined by national legislation, be at least the powers and duties listed in Schedule 2;
 - (bb) any transitional metropolitan council, may, at its discretion, decide not to exercise any such power or perform any such duty;
 - (iii) determine or re-determine the number of seats in a transitional local council or transitional metropolitan council and transitional metropolitan substructure; and
 - (iv) delimit or re-delimit the area of jurisdiction of any transitional local council and transitional metropolitan substructure into wards in accordance with Schedule 3.

[Para. (b) substituted by s. 3 (a) of Act 61 of 1995.]

(3) After making a delimitation, or re-delimitation, and determination, or re-determination, contemplated in subsection (2), the MEC shall exercise the powers conferred upon him or her by section 10 (1) incorporating the provisions of such delimitation, or re-delimitation, and determination, or re-determination, in the proclamation contemplated in the said section.

[Sub-s. (3) substituted by s. 3 (b) of Act 61 of 1995.]

(4) (a) Any delimitation or determination made in terms of subsection (2) may from time to time, but not later than a date three months prior to the day determined by the Minister as contemplated in section 9 (1), be reviewed by the MEC.

(b) The provisions of subsections (2) and (3) shall apply *mutatis mutandis* to a delimitation and determination as a result of a review contemplated in paragraph (a).

[Sub-s. (4) added by Proclamation R174 of 30 November 1994, deleted by s. 3 (c) of Act 61 of 1995 and added by s. 7 (1) (b) of Act 89 of 1995.]

9 Elections for transitional councils

(1) Notwithstanding anything to the contrary contained in any law, but subject to the provisions of this section, the first election, after the commencement of this Act, of the members of any transitional council, transitional metropolitan substructure, transitional rural council and transitional representative council shall take place on 1 November 1995, except in the case of a particular transitional council, transitional metropolitan substructure, transitional rural council or transitional representative council, or any number of such councils and substructures, in respect of which the Minister has determined another date by notice in the *Gazette* after consultation with the MEC of a province concerned.

[Sub-s. (1) substituted by s. 4 (a) of Act 61 of 1995.]

(1A) If an election is not held before 31 August 1996, or if the Minister at any time has reason to believe that an election will not be held before 31 August 1996 in respect of-

- (a) a proclaimed transitional council or transitional metropolitan substructure;
- (b) a proclaimed transitional rural council or transitional representative council; or
- (c) any council or substructure in any area for which any such council or substructure has not been proclaimed,

all the duties, powers and functions which vested in the MEC concerned in terms of this Act in respect of any such council, substructure or area, shall vest in the Minister with effect from a date determined by the Minister by notice in the *Gazette*.

[Sub-s. (1A) inserted by s. 4 (b) of Act 61 of 1995 and amended by s. 1 (a) of Act 12 of 1996.]

(1B) (a) Any transitional council, transitional metropolitan substructure or transitional rural council for the pre-interim phase shall dissolve on the day on which an election, as contemplated in subsection (1), of the members of such council or substructure is held, and until the first meeting of the newly elected council or substructure is held, the chief executive officer concerned or a person appointed by the Minister shall exercise or perform the duties, powers and functions of such council or substructure.

(b) The chief executive officer or person, as the case may be, referred to in paragraph (a), shall within thirty days after the election of the members of the transitional council, transitional metropolitan substructure or transitional rural council for the pre-interim phase, convene the first meeting of such council or substructure.

(c) Any transitional council or transitional metropolitan substructure or other such body for the pre-interim phase for which no election has been held before or on 31 August 1996 may be dissolved by the Minister by notice in the *Provincial Gazette* on a day specified therein, and the duties, powers and functions of such council, substructure or body shall from that day and until an election is held be exercised and performed by the chief executive officer concerned, or by a person appointed by the Minister as administrator of such council, substructure or body.

[Para. (c) substituted by s. 1 (b) of Act 12 of 1996.]

[Sub-s. (1B) inserted by s. 4 (b) of Act 61 of 1995.]

(2) Notwithstanding anything to the contrary contained in any law, the MEC may by proclamation in the *Provincial Gazette*-

(a) make regulations, not inconsistent with this Act and the Constitution of the Republic of South Africa, 1993, regarding-

(i) the determination of wards and polling districts;

(ii) voters and voters' lists, including the determination of the qualifications of voters;

(iii) members of transitional councils and transitional metropolitan substructures, including the qualifications and terms of office of members;

(iv) the conducting of and procedures at the election;

(v) election expenses;

(vA) a Code of Conduct which shall be complied with by parties and candidates for the election, as well as for the establishment, constitution, powers, duties and functions of election tribunals and election appeal tribunals and for the sanctions which may be applied by such tribunals for contraventions of that Code;

[Sub-para. (vA) inserted by s. 4 (c) of Act 61 of 1995.]

(vi) corrupt and illegal practices and other related offences; and

(vii) any other matter which the MEC may deem necessary or expedient to prescribe in order to achieve or promote the objects of this section,

(b) and the generality of this provision shall not be limited by the preceding subparagraphs of this paragraph; declare that any law or any provision of any law pertaining to the election of members of any local government body in the province concerned shall, subject to the adjustment or amendment thereof set out in that proclamation, for the purposes of an election referred to in subsection (1), apply to any transitional council or transitional metropolitan substructure referred to in subsection (1).

[Sub-s. (2) amended by s. 13 (b) of Act 97 of 1996.]

(3) Regulations made under subsection (2) (a) may prescribe penalties for any contravention thereof or a failure to comply therewith, of a fine, or imprisonment for a period not exceeding five years.

[Sub-s. (3) substituted by Proclamation R35 of 31 March 1995 and by s. 8 (1) (a) of Act 89 of 1995.]

(3A) (a) The respective MECs shall, as far as is practicable, having regard to special circumstances prevailing within each province, strive towards substantial uniformity in respect of the content of the regulations made under subsection (2) (a) and shall, to this end, before the publication of the regulations, consult with one another and reach agreement at a meeting between the Minister and the MECs or their representatives.

(b) Where an MEC fails to make the regulations referred to in subsection (2) (a) within a period agreed upon at the meeting contemplated in paragraph (a), the Minister may exercise the powers conferred upon that MEC by subsection (2) (a) and the provisions of subsections (3) and (4) shall apply *mutatis mutandis* to the exercise of such powers by the Minister.

[Sub-s. (3A) inserted by Proclamation R174 of 30 November 1994 and by s. 8 (1) (b) of Act 89 of 1995.]

(4) Any regulation made under paragraph (a) of subsection (2) and any declaration contemplated in paragraph (b) of that subsection, shall be in accordance with the principles contained in Schedule 4.

(5) Any regulation made under paragraph (a) of subsection (2), may be made effective from a date preceding its promulgation: Provided that if a penalty is prescribed for the contravention of any regulation which is so made effective from a date preceding its promulgation, such penalty shall be deemed not to have been prescribed for any such contravention which preceded such promulgation.

[Sub-s. (5) added by s. 4 (d) of Act 61 of 1995.]

[S. 9 amended by s. 13 (a) of Act 97 of 1996.]

PART VA

RURAL LOCAL GOVERNMENT (ss 9A-9E)

[Part VA inserted by Proclamation R65 of 30 June 1995 and by s. 9 (1) of Act 89 of 1995.]

9A Definitions

In this Part, unless the context indicates otherwise-

'district council' means a services council, sub-regional council, regional council or district council referred to in section 10 (3) (i);

'interest group' means-

- (a) farmers, landowners or levy payers;
- (b) farm labourers;
- (c) women; and
- (d) traditional leaders;

'remaining area' means any area which is situated within that part of the area of a district council which does not form part of the area of jurisdiction or area of a transitional local council, a transitional representative council or a transitional rural council;

'transitional representative council' means a transitional representative council referred to in section 9B (4) (a);

'transitional rural council' means a transitional council for a rural area of local government referred to in section 10 (3) (iA).

[S. 9A inserted by Proclamation R65 of 30 June 1995, (as corrected by Government Notice R1038 of 14 July 1995) and by s. 9 (1) of Act 89 of 1995.]

9B Powers of MEC relating to rural local government

(1) The MEC may make such arrangements relating to the establishment of district councils, transitional representative councils and transitional rural councils as are necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Part, including-

- (a) the delimitation of the area of a transitional representative council after due consideration of the advice and written recommendations of the Board; and
- (b) the determination of the number of members of a district council or a transitional representative council.

(2) Without derogating from the generality of the power conferred by subsection (1), but subject to the provisions of this Part, the arrangements contemplated in that subsection may include the exercise of the powers conferred upon the MEC by sections 9 and 10.

(3) Without derogating from the generality of the power conferred by section 9, a proclamation contemplated in that section may, in respect of rural local government, provide for-

- (a) the qualifications for election or nomination as members of a district council or a transitional representative council, their election or nomination and periods of office, the vacating of their offices, and the filling of casual vacancies in such council; and
- (b) the election of a chairperson, a vice-chairperson or an acting chairperson of a district council or a transitional representative council: Provided that the MEC may appoint a person who has not been elected as a member of a district council, as chairperson of such council: Provided further that the period of office of a person who has been appointed as chairperson of a district council shall lapse by not later than 1 July 1997, whereafter the chairpersons of all district councils shall be elected.

[Para. (b) amended by s. 2 of Act 97 of 1996.]

(4) Without derogating from the generality of the power conferred by section 10, a proclamation contemplated in that section may, in respect of rural local government, provide for-

- (a) the establishment of, and the delimitation of the area of, a transitional representative council, and the convening of and procedure and quorum at meetings thereof;
- (b) the payment of transport and subsistence allowances to members of a transitional representative council; and
- (c) the dissolution of any transitional rural council or the conversion of any such council into a transitional representative council.

[S. 9B inserted by Proclamation R65 of 30 June 1995 and by s. 9 (1) of Act 89 of 1995 and amended by s. 13 (a) of Act 97 of 1996.]

9C Transitional representative councils

(1) A transitional representative council shall be vested or charged with the following powers and duties, namely-

- (a) members elected in accordance with a system of proportional representation; and
- (b) if the MEC considers it desirable, members nominated by interest groups recognized by the MEC.

[Para. (b) amended by s. 13 (a) of Act 97 of 1996.]

(2) At least one member shall be nominated by each interest group by virtue of subsection (1) (b): Provided that-

- (a) no single interest group shall nominate a number of members which exceeds 10 per cent of the total number of members to be elected and nominated in respect of the relevant transitional representative council;
- (b) the total number of members nominated by interest groups shall not exceed 20 per cent of the total number of members to be elected and nominated in respect of the relevant transitional representative

council.

(3) A transitional representative council shall subject to section 10D (2) be vested and charged with the following powers and duties, namely-

- (a) subject to the provisions of section 9D (1) (b) (i), to elect from among its members a person or persons to represent the council on the district council in question;
- (b) to secure, through the said person or persons, the best services possible for the inhabitants of its area;
- (c) to serve as the representative body of its area-
 - (i) in respect of any benefits resulting from the reconstruction and development programme; and
 - (ii) in the development of a democratic, effective and affordable system of local government; and
- (d) in general, to represent the inhabitants of its area in respect of any matter relating to rural local government.

[Sub-s. (3) amended by s. 3 of Act 97 of 1996.]

[S. 9C inserted by Proclamation R65 of 30 June 1995 and by s. 9 (1) of Act 89 of 1995.]

9D Framework for rural local government

(1) The following principles shall apply in respect of rural local government, namely-

- (a) provision shall be made for the division of the whole area of each province into areas of jurisdiction of transitional metropolitan councils, if any, and areas of district councils;
- (b) a district council shall consist of-
 - (i) members elected as prescribed by regulation under section 12 on a proportional basis according to the number of members of each of the transitional local councils, transitional representative councils or transitional rural councils, the areas of jurisdiction or areas of which are situate within the area of such district council; and

[Sub-para. (i) substituted by s. 4 of Act 97 of 1996.]
 - (ii) in the case where there is a remaining area, members elected or elected and nominated from such area in accordance with a ratio based on the inhabitant numbers of the area of such district council in relation to such numbers of the remaining area;
- (c) the provisions of paragraph (b) (ii) shall cease to apply in respect of any remaining area with effect from the date upon which such area is included within the area of jurisdiction of a local government established by or under legislation contemplated in section 245 (2) of the Constitution, or the date upon which a period of six months has elapsed from the polling day or polling period for elections in terms of this Act, whichever is the later date;
- (d) district councils, transitional local councils, transitional representative councils and transitional rural councils shall be utilized with a view to developing a democratic, effective and affordable system of local government.

(2) The members referred to in subsection (1) (b) (ii) shall-

- (a) be elected in accordance with a system of proportional representation; and
- (b) if the MEC considers it desirable, be nominated by interest groups recognized by the MEC.

[Para. (b) amended by s. 13 (a) of Act 97 of 1996.]

(3) At least one member shall be nominated by each interest group by virtue of subsection (2) (b): Provided that-

- (a) no single interest group shall nominate a number of members which exceeds 10 per cent of the total number of members to be elected and nominated in respect of the relevant remaining area;
- (b) the total number of members nominated by interest groups shall not exceed 20 per cent of the total number of members to be elected and nominated in respect of the relevant remaining area.

(4) In the delimitation of the area of any transitional representative council and the area of jurisdiction of any transitional rural council, preference shall be given to a delimitation which has the effect that the said area or area of jurisdiction is situate within the boundaries of a magisterial district.

[S. 9D inserted by Proclamation R65 of 30 June 1995 and by s. 9 (1) of Act 89 of 1995.]

9E Construction of this Part

The provisions of this Part shall apply in addition to, and not in substitution for, the other provisions of this Act.

[S. 9E inserted by Proclamation R65 of 30 June 1995 and by s. 9 (1) of Act 89 of 1995.]

PART VI

TRANSITIONAL MEASURES FOR BOTH PRE-INTERIM AND INTERIM PHASES (s 10-10A)

10 Powers of MEC

(1) For the purposes of this Act the MEC concerned may in respect of the area of jurisdiction of the province for which he or she is appointed, but subject to the provisions of subsection (4)-

- (a) by proclamation in the *Provincial Gazette*, make enactments not inconsistent with this Act with a view to the transitional regulation of any matter relating to local government;

[Para. (a) amended by s. 13 (b) of Act 97 of 1996.]

- (b) provide in any such enactment for the amendment or repeal of a law in force in or in a part of that province, including an Act of Parliament or any provision of such a law, in so far as it relates to any such matter and applies in or in such part of that province;

[Para. (b) substituted by Proclamation R129 of 15 July 1994 and by s. 10 (1) (a) of Act 89 of 1995.]

- (c) provide in any such enactment that any law, including any Act of Parliament, or any provision of such a law, pertaining to local government affairs shall, subject to the adjustment or amendment of such law or provision as he or she may make in such enactment, apply to any local government body, transitional council, or transitional metropolitan substructure referred to in section 16, or to any category of such local government bodies, transitional councils or transitional metropolitan substructures, in that province or a part thereof,

[Para. (c) substituted by Proclamation R129 of 15 July 1994 and by s. 10 (1) (a) of Act 89 of 1995.]

and he or she may make different such enactments in respect of different areas, local government bodies, transitional councils or transitional metropolitan substructures.

[Sub-s. (1) amended by Proclamation R59 of 8 June 1995.]

- (2) The MEC may in like manner amend or repeal a proclamation made under subsection (1).

(3) Without derogating from the generality of the powers conferred by subsection (1), a proclamation contemplated in that subsection may provide for-

- (a) the establishment, disestablishment or re-establishment under a name set out in the proclamation, of any transitional council or transitional metropolitan substructure;

[Para. (a) substituted by s. 5 of Act 61 of 1995.]

- (b) the termination of the terms of office of members of any local government body and the appointment of persons as members of any transitional council or transitional metropolitan substructure;
- (c) the termination of the terms of office of members of any local government body, transitional council or transitional metropolitan substructure and the appointment of one or more persons or any body to manage and control the affairs of such local government body, transitional council or transitional metropolitan substructure, and on behalf of such local government body, transitional council or transitional metropolitan substructure to exercise and perform the powers and duties, rights and obligations of such local government body, transitional council or transitional metropolitan substructure;
- (d) the application to any such local government body, transitional council or transitional metropolitan substructure of any law which in the opinion of the MEC relates to local authorities or local authority matters to the extent stated in the proclamation, or the regulation with reference to any such local government body, transitional council or transitional metropolitan substructure of any matter contained in any such law;
- (e) the suspension of or exemption from any provision of any law which relates to the establishment, dissolution or combination of local government bodies, or the determination or alteration of the areas or regions thereof;
- (f) the dissolution of any local government body, including-
- (i) the transfer or admission of persons to or in the service of any transitional council or transitional metropolitan substructure, subject to-
 - (aa) conditions not less favourable than those under which they serve; and
 - (bb) applicable labour law;
 - (ii) the winding-up or transfer of the assets, liabilities, rights and obligations of any local government body, including the protection of such assets from attachment and sale in execution; and
 - (iii) the continued application of the resolutions, by-laws or regulations of such local government body;
- (g) the delimitation of the area of jurisdiction of any local government body, transitional council or transitional metropolitan substructure into wards;
- (h) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a transitional metropolitan council with transitional metropolitan substructures for a metropolitan area of local government, including the delimitation of such an area, and the constitution, functioning, powers, duties, assets, rights, employees and financing of such transitional metropolitan council and transitional metropolitan substructures: Provided that-
- (i) the powers and duties of any transitional metropolitan council shall, subject to section 126 of the Constitution of the Republic of South Africa, 1993, and, in the case of the functions water and electricity, unless otherwise determined by national legislation, be at least the powers and duties listed in Schedule 2;
 - (ii) any transitional metropolitan council may, at its discretion, decide not to exercise any such power or perform any such duty; and

(iii) such transitional metropolitan council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12 (1) (a) of the Regional Services Councils Act, 1985 (Act 109 of 1985), or section 16 (1) (a) of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990), as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;

(i) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a body to be known as a services council, sub-regional council, regional council or district council to jointly exercise the powers and perform the duties in relation to certain local government functions for a non-metropolitan area of local government by transitional local councils, local government co-ordinating committees or local government bodies within such areas, including the delimitation of such an area after due consideration of the advice and written recommendations of the Board, and the constitution, functioning, powers, duties, assets, rights, employees and financing of such body: Provided that such services council, sub-regional council, regional council or district council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12 (1) (a) of the Regional Services Councils Act, 1985, or section 16 (1) (a) of the KwaZulu and Natal Joint Services Act, 1990, as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;

[Para. (i) substituted by s. 10 (1) (b) of Act 89 of 1995.]

(iA) the establishment of a transitional council for a rural area of local government not falling within the area of jurisdiction of a transitional metropolitan council or a transitional local council, including the delimitation of the area of jurisdiction of such council after due consideration of the advice and written recommendations of the Board, and the constitution, election, functioning, powers, duties, assets, rights, employees and financing of such council, all the members of which shall be elected in accordance with a system of proportional representation or of ward representation or of both proportional representation and ward representation;

[Para. (iA) inserted by Proclamation R174 of 30 November 1994 and by s. 10 (1) (c) of Act 89 of 1995 and substituted by s. 2 (1) of Act 12 of 1996.]

(j) the protection of the rights and benefits, including the remuneration, allowances and pension benefits, of employees of a local government body, subject to applicable labour law and due consultation between employer and employee bodies;

(k) the establishment of a body at the request of any local government body, transitional council or transitional metropolitan substructure to assist any such local government body, transitional council or transitional metropolitan substructure which may be affected by the provisions of any proclamation made under subsection (1) to manage the implementation of the provisions of such proclamation, including the constitution, functioning, powers, duties, employees and financing of such body: Provided that the functioning, powers and duties of such body shall in no way derogate from the autonomy and powers of a local government body, transitional council or transitional metropolitan substructure under the applicable laws, including this Act.

[Para. (k) added by Proclamation R174 of 30 November 1994 and by s. 10 (1) (d) of Act 89 of 1995.]

(4) (a) Where-

- (i) after 30 April 1995 but before 7 June 1995, the MEC in concurrence with the Committee made a delimitation, determination or any other decision whatsoever, the contents of which are by virtue of the provisions of the Act required to be incorporated or embodied in or to be given effect to by, an enactment made by the MEC by proclamation in terms of this section; and
- (ii) in consequence of one or more vacancies having arisen in the membership of the Committee by virtue of section 3 (5) (c), the remaining members in favour of such concurrence, do not constitute at least two-thirds of the Committee,

the MEC shall not issue such proclamation until such time as such vacancies have been filled in terms of section 3 (5) (b) and-

(aa) the proposed enactment has first been submitted to the Committee for its approval in terms of subparagraph (bb); and

(bb) the Committee has in writing approved of such proposed enactment.

(b) A proclamation contemplated in paragraph (a) (aa) or (bb) which is issued without the prior approval required by that paragraph, shall be without any legal force and effect whatsoever.

(c) The fact that the contents of the delimitation, determination or decision contemplated in paragraph (a) are being duly incorporated or embodied in, or given effect to by, the proposed enactment and that the Committee has

previously, that is, after 30 April 1995 but before 7 June 1995, concurred in such delimitation or decision, shall not oblige the Committee to approve such proposed enactment nor preclude the Committee from withholding its approval where the Committee is satisfied that it would not have concurred in such delimitation, determination or decision had the MEC, on or after 7 June 1995, notified the Committee in terms of section 4 (2) (a) of his or her intention to make such delimitation, determination or decision.

[Sub-s. (4) added by Proclamation R59 of 8 June 1995.]

[S. 10 amended by s. 13 (a) of Act 97 of 1996.]

10A Exercise or performance of provincial powers and duties outside province

(1) The MEC of a province may, with the approval of the President and after agreement or arrangement with the MEC of any other province, and after consultation with any negotiating forum or local government body which may be affected, in accordance with such agreement or arrangement exercise any power or perform any duty conferred or imposed on him or her by this Act, in the other province which he or she may exercise or perform in respect of the area of jurisdiction of the province for which he or she is appointed, and for the purpose of the exercise or performance of such power or duty and for the purposes of the provisions of this Act, such other province shall be deemed to constitute part of the province for which he or she is appointed.

(2) A Board established for a province as contemplated in section 11 (1) may, with the consent of the MEC appointed for that province, granted with the approval of the President, perform any function referred to in section 11 (6) in any other province in terms of an agreement or arrangement between the MEC of that province and the MEC of such other province, and for the purpose of the performance of that function such other province shall be deemed to constitute part of that province.

[S. 10A inserted by Proclamation R174 of 30 November 1994 and by s. 11 (1) of Act 89 of 1995 and amended by s. 13 (a) of Act 97 of 1996.]

PART VIA

INTERIM PHASE (ss 10B-10N)

[Part VIA inserted by s. 5 of Act 97 of 1996.]

10B Definitions

In this Part, unless the context indicates otherwise-

'**chief executive officer**' means the person appointed by the council of a municipality as its chief executive officer or town clerk and includes any person acting lawfully in his or her stead irrespective of the designation of the post occupied by such person, and such person shall be the accounting officer of that municipality, and shall as such be charged with the responsibility of accounting for all moneys received and for all payments made by the municipality, and the acquisition, custody and disposal of all municipal property;

'**council**' means the council of a municipality;

'**demarcation board**' means a Municipal Demarcation Board established under section 10J;

'**district council**' means a services council, sub-regional council, regional council or district council referred to in section 10 (3) (i);

'**integrated development plan**' means a plan aimed at the integrated development and management of the area of jurisdiction of the municipality concerned in terms of its powers and duties, and which has been compiled having regard to the general principles contained in Chapter 1 of the Development Facilitation Act, 1995 (Act 67 of 1995), and, where applicable, having regard to the subject matter of a land development objective contemplated in Chapter 4 of that Act;

'**local council**' means a transitional local council as defined in section 1 (1);

'**metropolitan council**' means a transitional metropolitan council as defined in section 1 (1);

'**metropolitan local council**' means a transitional metropolitan substructure as defined in section 1 (1);

'**municipality**' includes a local council, a metropolitan council, a metropolitan local council, a representative council, a rural council and a district council;

'**prescribed**' means prescribed by regulation under this Act;

'**representative council**' means a transitional representative council defined in section 9A;

'**rural council**' means a transitional rural council defined in section 9A.

[S. 10B inserted by s. 5 of Act 97 of 1996.]

10C Powers and duties of metropolitan councils and metropolitan local councils

(1) A metropolitan council shall, having regard to the principles of co-operative government, promote-

- (a) integrated economic development;
- (b) the equitable redistribution of municipal resources; and
- (c) the equitable delivery of services,

so as to ensure that imbalances that may exist, are addressed.

(2) Notwithstanding the provisions of sections 7 (1) (b), 8 (2) and 10 (3) (h), a metropolitan council-

- (a) shall have the powers and duties listed in Schedule 2;
- (b) shall have the powers and duties conferred or imposed upon or delegated or assigned to metropolitan

- councils generally or to a specific metropolitan council by or under any law: Provided that-
- (i) no power or duty shall be delegated or assigned to a metropolitan council without providing the sufficient resources for the exercise of such power or the performance of such duty: Provided that such delegation or assignment shall be by agreement; and
 - (ii) such delegation or assignment shall be made on a basis which will ensure the sustainability and practicability of the exercise of such power or performance of such duty;
- (c) may exercise any power or perform any duty concerning a matter which is reasonably necessary for or incidental to the effective exercise of its powers or performance of its duties.

(3) A metropolitan local council-

- (a) shall have the powers and duties listed in Schedule 2A;
- (b) shall in addition have all such other powers and duties as are normally conferred or imposed upon primary municipalities;
- (c) shall have such other powers and duties conferred or imposed upon or delegated or assigned to metropolitan local councils by or under any law: Provided that-
 - (i) no power or duty shall be delegated or assigned to a metropolitan local council without providing the sufficient resources for the exercise of such power or the performance of such duty: Provided that such delegation or assignment shall be by agreement; and
 - (ii) such delegation or assignment shall be made on a basis which will ensure the sustainability and practicability of the exercise of such power or performance of such duty;
- (d) may exercise any power or perform any duty concerning a matter which is reasonably necessary for or incidental to the effective exercise of its powers or the performance of its duties.

(4) Notwithstanding anything to the contrary in this Act contained, but subject to section 10N (4) (b), metropolitan councils and metropolitan local councils may agree on the re-allocation of the powers and duties listed in Schedules 2 and 2A: Provided that in the re-allocation of powers and duties practicability, technological advisability and economical and financial efficiency shall be taken into consideration.

(5) (a) Before the contributions contemplated in item 1 (c) of Schedule 2 are determined or claimed, the metropolitan council shall consult with all its metropolitan local councils generally or the particular metropolitan local council concerned.

(b) A metropolitan local council which feels aggrieved by the determination of a contribution contemplated in item 1 (c) of Schedule 2 may, within 30 days after receiving notice of such determination, appeal to the Minister in writing against the determination, setting out the grounds of appeal.

(c) The Minister shall consider an appeal referred to in paragraph (b) and may confirm, set aside or alter the determination of the metropolitan council concerned.

(6) If a metropolitan local council cannot or does not exercise a power or perform a duty conferred or imposed upon such council, the metropolitan council may at the request of the MEC, intervene by assuming the responsibility for the relevant power or duty for such period and under such conditions as the MEC may determine: Provided that a metropolitan council shall not incur any financial liability as a result of such intervention and shall in accordance with item 1 (b) of Schedule 2 be refunded for any expenditure incurred in respect of the exercise of the power or the performance of the duty.

(7) (a) Any metropolitan council or metropolitan local council may enter into agreements with each other or with any other person, body or institution in terms of which one party undertakes on behalf of the other to exercise a power or perform a duty which the other party may exercise or perform, subject to such conditions as may be agreed upon.

(b) A metropolitan council or metropolitan local council may not enter into an agreement contemplated in paragraph (a) in respect of any of its legislative or expropriation powers or duties, its power to determine levies, taxes and rates or any power or duty requiring a resolution by a majority of all the members of such council.

(c) Notwithstanding anything to the contrary in any law contained, any agreement contemplated in paragraph (a) which was entered into prior to the commencement of the Local Government Transition Act Second Amendment Act, 1996, shall be deemed to have been entered into in terms of that paragraph.

(8) (a) If a dispute arises between a metropolitan council and a metropolitan local council regarding the allocation or exercise of a power or the performance of a duty, such dispute shall be resolved as determined in Schedule 8: Provided that in the resolution of a dispute the practicability, technological advisability and economical and financial efficiency be taken into consideration in the allocation or the exercise of powers and performance of duties to or by a metropolitan council or a metropolitan local council.

(b) Until such time as a dispute contemplated in paragraph (a) has been resolved, the council exercising the power or performing the duty at the time when the dispute arises, will remain responsible for the exercise of that power or performance of that duty.

[S. 10C inserted by s. 5 of Act 97 of 1996.]

10D Powers and duties of district councils, local councils, rural councils and representative councils

- (1) A district council, a local council and a rural council-

- (a) shall have the powers and duties contained in the proclamation contemplated in section 10, establishing such council: Provided that a district council, local council and a rural council may establish and control a municipal law enforcement agency subject to the South African Police Service Act, 1995 (Act 68 of 1995);
 - (b) shall have the powers and duties conferred or imposed upon or delegated or assigned to such council by or under any law: Provided that-
 - (i) no power or duty shall be delegated or assigned to such council without providing the sufficient resources for the exercise of such power or the performance of such duty: Provided that such delegation or assignment shall be by agreement; and
 - (ii) that such delegation or assignment shall be made on a basis which will ensure the sustainability and practicability of the exercise of such power or the performance of such duty; and
 - (c) may exercise any power or perform any duty concerning a matter which is reasonably necessary or which is incidental to the effective exercise of its powers and performance of its duties.
- (2) A representative council-
- (a) shall within its area of jurisdiction have those powers and duties as the MEC may, in consultation with the Minister and after consultation with-
 - (i) the representative council concerned; and
 - (ii) the district council concerned,
 by notice in the *Provincial Gazette* identify as a power or duty of the representative council concerned, whereupon such representative council shall be competent to exercise such power or perform such duty within its area of jurisdiction;
 - (b) shall have any other power or duty conferred or imposed upon or delegated or assigned to representative councils generally or to a specific representative council or a category of representative councils by or under any law.

(3) Section 10C (6), (7) and (8) shall with the necessary changes apply to a district council, local council, rural council and representative council.

(4) A district council-

- (a) may-
 - (i) at rates determined by the council with the concurrence of the MEC responsible for Finance with the concurrence of the Minister of Finance, levy and claim the levies referred to in section 12 (1) (a) of the Regional Services Council Act, 1985 (Act 109 of 1985), or section 16 (1) (a) of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990), as the case may be; and
 - (ii) claim payment from any local council, rural council or representative council to cover the actual costs of any service performed or rendered on behalf of or to such council; and
- (b) shall-
 - (i) with the approval of the local councils, rural councils and representative councils concerned, formulate and implement an integrated development plan for its area of jurisdiction; and
 - (ii) with the approval of the local council, rural council or representative council concerned-
 - (aa) formulate and, if so requested, implement an integrated development plan in respect of each local council, rural council and representative council within its area of jurisdiction; and
 - (bb) if so requested, ensure the provision of financial, technical and administrative support service to, as well as the proper functioning of, all the local councils, rural councils and representative councils within its area of jurisdiction:

Provided that a district council, local council and rural council shall, subject to subsection (4), within 12 months after the coming into operation of the Local Government Transition Act Second Amendment Act, 1996, or such further period as the MEC after consultation with the Minister may determine, formulate and implement an integrated development plan.

(5) The Minister shall, after consultation with the MECs, establish a body to advise on the expeditious establishment of municipalities in remaining areas and on the rendering of assistance to municipalities in rural areas for the development of administrative infrastructure and the building of service rendering capacity.

[S. 10D inserted by s. 5 of Act 97 of 1996.]

10E

[S. 10E inserted by s. 5 of Act 97 of 1996 and repealed by s. 43 of Act 27 of 1998.]

10F

[S. 10F inserted by s. 5 of Act 97 of 1996 and repealed by s. 7 (1) of Act 52 of 1997.]

10G

[S. 10G inserted by s. 5 of Act 97 of 1996, amended by s. 36 (1) of Act 12 of 2004 and repealed by s. 179 (1) of Act 56 of 2003.]

10H Certain acts committed by council members or employees of municipalities, and by certain other people, are prohibited

(1) Except with the consent of the council, no council member or employee of a municipality shall-

- (a) accept any commission, remuneration or reward from any person other than the municipality for or in connection with the performance or non-performance of his or her functions as a member or an employee of the municipality or in connection with any transaction to which the municipality is a party;
- (b) enter into any transaction with the municipality in a capacity other than that of a member or employee of the municipality, unless such transaction is connected with the provision of accommodation to him or her in the area under the municipality's jurisdiction or the rendering of a service to him or her as a resident of such area;
- (c) perform work for or on behalf of the municipality in a capacity other than that of a member or employee of that municipality; or
- (d) appear on behalf of any other person before the municipality or any committee or other institution of the municipality in a capacity other than that of a member or employee of that municipality.

(2) Any council member or employee of a municipality who has accepted any commission, remuneration or reward in contravention of subsection (1), shall pay to the municipality an amount equal to the amount of such commission, remuneration or reward, or where it did not consist of money, the value thereof as determined by the municipality.

(3) (a) No transaction of purchase, sale, hire or lease shall be entered into by a municipality with an employee of that municipality or with the spouse, partner or business associate of such employee without the prior approval of the council having been obtained: Provided that this provision shall not apply where such a transaction is entered into with an employee in accordance with his or her conditions of service.

(b) No council member shall directly or indirectly become involved in any contract with the municipality or share in the profits or losses of any contract with the municipality or in any other manner obtain a financial interest in any of the businesses of the municipality without the prior approval of the council having been obtained, and in the event of more than 20 per cent of the council members objecting to the granting of such approval, the matter shall be referred to the MEC for his or her approval.

(c) If the spouse of a council member or a partner of such member or a partner of the member's spouse, or the employer of a member or the employer of the member's spouse becomes directly or indirectly involved in any contract with the municipality or directly or indirectly shares in the profits or losses of any contract with the municipality or in any other manner obtains a financial interest in the business of the municipality, such member shall disclose to the council the nature and extent of such interest to enable the council to submit the particulars thereof to the MEC for consideration.

(d) (i) A council member who has any material interest in any contract which is about to be entered into by the municipality, shall declare his or her interest and full particulars thereof at the first meeting of the council at which it is possible for him or her to do so, and he or she shall withdraw in the event of such contract being discussed by the council during any meeting of the council and he or she shall not participate in any voting in connection therewith.

(ii) A council member who becomes materially interested in a contract which has been entered into by the municipality, shall declare his or her interest and full particulars thereof at the first meeting of the council at which it is possible for him or her to do so.

(e) A declaration of interest under paragraph (d) shall be recorded in the minutes of the meeting of the council at which such declaration is made.

(f) A council member who contravenes a provision of paragraph (b), (c) or (d), shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding 12 months.

(4) If the MEC-

- (a) after an allegation has come to his or her notice; or
- (b) after he or she received a report from a council, a chief executive officer, the Auditor-General, the Public Protector appointed under section 110 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), or an Attorney-General,

is *prima facie* of the opinion that a council member, a chief executive officer or an employee has acted unlawfully or is responsible for any act or omission which has resulted or may result in fraud, an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or maladministration, or is of the opinion that the allegation is of such a nature that it justifies further action, he or she shall, subject to subsection (5), appoint a commission of inquiry in terms of the respective provincial laws to inquire into the matter: Provided that in the absence of a provincial law relating to a commission of inquiry, the provisions of sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act 8 of 1947), and the regulations made thereunder, shall with the necessary changes apply to the municipality concerned in so far as they are applicable to the functions of the municipality.

[Sub-s. (4) amended by s. 36 (1) of Act 12 of 2004.]

(5) The MEC may, instead of appointing a commission of inquiry-

- (a) appoint any person to conduct an investigation into a matter referred to in subsection (4); and
- (b) declare any provision of a provincial law contemplated in subsection (4) or the Commission's Act, 1947, applicable to the investigation.

(6) If the MEC, after considering a report referred to in subsection (4) or a report of a commission contemplated in subsection (5), is of the opinion that a council, a member or a chief executive officer or employee either intentionally acted unlawfully or is responsible for any act or omission which has resulted or may result in fraud, an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or maladministration, he or she may take such steps as he or she may deem necessary so as to deal with the matter.

[Sub-s. (6) substituted by s. 36 (1) of Act 12 of 2004.]

[S. 10H inserted by s. 5 of Act 97 of 1996.]

10I Furnishing of information

The Minister or the MEC may by notice in writing or by notice in the *Gazette* or *Provincial Gazette*, respectively, request any municipality to supply to him or her or to a national department of State or a provincial department or a body approved by him or her in a manner and form determined by him or her, any information listed in such notice and in such notice determine the period within which the relevant information must be supplied.

[S. 10I inserted by s. 5 of Act 97 of 1996.]

10J and 10K

[S. 10J and 10K inserted by s. 5 of Act 97 of 1996 and repealed by s. 43 of Act 27 of 1998.]

10L Regulations concerning by-elections and voters' rolls

(1) The Minister may, after consultation with the MEC and the relevant organisations contemplated in section 10F, make regulations concerning-

- (a) the maintenance and updating of voters' rolls for the purposes of municipal elections;
- (b) the conducting of and procedures for by-elections;
- (c) the expenses for the holding of by-elections;
- (d) a code of conduct which shall be complied with by political parties and candidates for by-elections, as well as for the establishment, constitution, powers and duties of election tribunals and election appeal tribunals and for the sanctions which may be applied by such tribunals for contraventions of such code; and
- (e) corrupt and illegal practices and other related offences.

(2) Any regulation made under subsection (1) shall be in accordance with the principles contained in Schedule 4.

(3) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding five years.

[S. 10L inserted by s. 5 of Act 97 of 1996.]

10M Co-operative Government

(1) The MEC shall promote and support the development of local government in order to enable municipalities to exercise their powers and perform their duties in the management of their affairs, and shall annually provide information to the Minister in this regard.

(2) The MEC and each municipality shall promote and support co-operation between municipalities in order to develop the capacity of each municipality to exercise its powers and perform its duties so as to manage its affairs.

[S. 10M inserted by s. 5 of Act 97 of 1996.]

10N Transitional provisions relating to sections 3, 9, 10 and 10C

(1) A committee established under section 3 shall be disestablished on the day immediately following upon the day on which the last election or elections contemplated in section 9 have been held for the province concerned.

(2) The powers conferred upon the MEC by section 10 shall lapse in respect of the area of jurisdiction of a local council, metropolitan council, metropolitan local council, rural council or representative council on the day immediately prior to the commencement of the Local Government Transition Act Second Amendment Act, 1996.

(3) Any proclamation made under section 10 and which was in force immediately prior to the commencement of the Local Government Transition Act Second Amendment Act, 1996, shall, notwithstanding the provisions of subsection (2), remain in force.

(4) The MEC may, with the concurrence of the Minister, by proclamation in the *Provincial Gazette*-

- (a) amend or repeal a proclamation referred to in subsection (3): Provided that such proclamation may be amended with retrospective effect to a date not earlier than the publication thereof;
- (b) notwithstanding anything to the contrary in this Act contained, amend or repeal a regulation contemplated in section 9 (2); or
- (c) re-allocate the powers and duties which have been agreed upon in terms of section 10C (3).

(5) In the event of an inconsistency between a proclamation referred to in subsections (3) or (4) and the provisions

of this Act, the latter shall prevail: Provided that the provisions of this subsection shall not apply to those provisions of a proclamation dealing with the allocation of powers and duties of municipalities.

[S. 10N inserted by s. 5 of Act 97 of 1996.]

PART VII

LOCAL GOVERNMENT DEMARCATION BOARDS (s 11)

11

[S. 11 amended by Proclamation R174 of 30 November 1994 and by s. 12 (1) of Act 89 of 1995 and repealed by s. 6 (1) of Act 97 of 1996.]

PART VIII

GENERAL (ss 12-17)

12 Regulations

(1) The Minister may, after consultation with the MEC, make regulations concerning-

- (a) anything which shall or may be prescribed under this Act;
- (b) any matter referred to in this Act which in his or her opinion are necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act.

(2) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding five years.

[S. 12 substituted by s. 7 of Act 97 of 1996.]

13 Repeal of Act 102 of 1982, and transitional measures

(1) Subject to the provisions of this section the Black Local Authorities Act, 1982 (Act 102 of 1982), is hereby repealed.

(2) Where the MEC has in terms of section 8 of the Local Authority Affairs Amendment Act, 1991 (Act 127 of 1991), declared certain provisions of the Black Local Authorities Act, 1982, applicable to any other local authority or committee contemplated in that section, such provisions shall form part of the law applying to such local authority or committee.

[Sub-s. (2) amended by s. 13 (a) of Act 97 of 1996.]

(3) Notwithstanding the provisions of subsection (1), any council or committee established under the provisions of the Black Local Authorities Act, 1982, shall continue to exist subject to the provisions of this Act, and shall be deemed to be an institution or body contemplated in section 84 (1) (f) of the Provincial Government Act (Act 32 of 1961).

(4) The provisions of any law applying to local authorities in the province concerned shall, subject to the provisions of a proclamation contemplated in section 10 (1), apply *mutatis mutandis* to any local government body referred to in paragraph (b) of the definition of local government body.

(5) Any resolution, by-law or regulation of a local government body referred to in subsection (4), shall continue to be of force until amended or repealed by a proclamation contemplated in section 10 (1) or by a resolution, by-law or regulation of a transitional council or transitional metropolitan substructure.

(6) (a) The MEC may by notice in the *Provincial Gazette* define for the purposes of this subsection an area outside the area of a local government body referred to in paragraph (b) of the definition of local government body, and exercise in such area the powers conferred upon a local authority in a local authority area under the laws applicable to local authorities in the province concerned.

[Para. (a) amended by s. 13 (b) of Act 97 of 1996.]

(b) An area defined by the MEC in terms of section 2 (11) of the Black Local Authorities Act, 1982, and an area deemed to be so defined in terms of section 2 (12) of that Act, shall, subject to the provisions of this Act, be deemed to be an area defined in terms of paragraph (a) of this subsection: Provided that any delegation of a former MEC which was in force in respect of such an area immediately before the commencement of this Act shall, subject to the provisions of this Act, continue in force for the purpose of the continued administration of such an area, until such delegation is revoked or otherwise is no longer in force in law.

[Para. (b) substituted by Proclamation R174 of 30 November 1994 and by s. 13 (1) of Act 89 of 1995.]

(c) Any reference in any law, including this Act, to a local government body referred to in paragraph (b) of the definition of local government body shall be deemed, in respect of an area referred to in paragraph (a) of this subsection, also to be a reference to the MEC of the province concerned.

[Sub-s. (6) amended by s. 13 (a) of Act 97 of 1996.]

14 Repeal of Act 128 of 1991 and sections 28 and 29 of Act 134 of 1992, and transitional measures

(1) Subject to the provisions of subsection (2), the Interim Measures for Local Government Act, 1991 (Act 128 of 1991), and sections 28 and 29 of the Provincial and Local Authority Affairs Amendment Act, 1992 (Act 134 of 1992), are hereby repealed.

(2) Notwithstanding the provisions of subsection (1), any proclamation issued under the Interim Measures for Local Government Act, 1991, in connection with any matter referred to in section 8 of that Act, shall, subject to the

provisions of this Act, continue to be of force until amended or repealed by a proclamation contemplated in section 10 (1) of this Act.

15 Repeal of other laws, and transitional measures

(1) (a) Subject to the provisions of paragraph (b), the Regulations for the Administration and Control of Certain Urban Areas in Natal, 1982 (Proclamation 86 of 1982), and the Regulations for the Administration and Control of Certain Urban Areas in Natal, 1983 (Proclamation 67 of 1983), are hereby repealed.

(b) Notwithstanding the provisions of paragraph (a), any council or committee established under the provisions of the laws referred to in paragraph (a), shall continue to exist subject to the provisions of this Act, and shall be deemed to be an institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961).

(2) The provisions of any law applying to local authorities in the province concerned shall, subject to the provisions of a proclamation contemplated in section 10 (1), apply *mutatis mutandis* to any body performing local government functions under the laws referred to in subsection (1) (a).

(3) Any resolution, by-law or regulation of a body referred to in subsection (2), shall continue to be of force until amended or repealed by a proclamation contemplated in section 10 (1) or by a resolution, by-law or regulation of a transitional council or transitional metropolitan substructure.

(4) (a) Subject to the provisions of paragraph (b), the Regulations Governing the Administration and Control of the Areas Clermont and Edendale, 1974 (Proclamation 163 of 1974), and the Regulations for Local Authorities, 1988 (Government Notice 405 of 1988), are hereby repealed.

(b) Any area in respect of which the laws referred to in paragraph (a) applied immediately before the commencement of this Act, shall, subject to the provisions of this Act, be deemed to be a defined area referred to in section 13 (6) (a).

16 Transitional provisions

(1) Any transitional council or transitional metropolitan substructure established by a proclamation contemplated in section 10(1), shall be deemed to be an institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961).

(2) Subject to the provisions of this Act and any proclamation issued thereunder, the provisions of the laws applying to local authorities in the province concerned shall *mutatis mutandis* apply to any transitional council or transitional metropolitan substructure referred to in subsection (1).

(3) Any reference in any law to a local authority shall, unless clearly inappropriate, be deemed also to be a reference to any transitional council or transitional metropolitan substructure referred to in subsection (1).

(3A) Notwithstanding the provisions of section 10 (3) (j), the conclusion or amendment of any contract, the appointment or promotion of any person, or the award of a term or condition of service or other benefit, which occurred since the date of commencement of this Act in respect of any person employed by any local government body, may, within six months of 30 November 1994, be reviewed by a commission appointed by the MEC and presided over by a judge, and if not proper or justifiable in the circumstances of the case, the commission may reverse or alter the contract, appointment, promotion or award.

[Sub-s. (3A) inserted by Proclamation R174 of 30 November 1994 and by s. 14 (1) of Act 89 of 1995 and amended by s. 13 (a) of Act 97 of 1996.]

(4) Any Bill of a competent legislature which affects the status, boundaries, powers, duties or structure of any transitional council or transitional metropolitan substructure referred to in subsection (1), shall only be introduced after consultation with organized local government and the transitional council or transitional metropolitan substructure concerned.

(5) Notwithstanding anything to the contrary in any law contained-

- (a) any resolution of any transitional council or transitional metropolitan substructure referred to in subsection (1) pertaining to the budget of such transitional council or transitional metropolitan substructure shall be taken by a two-thirds majority of the members of such council or substructure, and any resolution of any transitional council or transitional metropolitan substructure pertaining to town planning shall be taken by a majority of the members of such council or substructure: Provided that any such transitional council or transitional metropolitan substructure may delegate the power to take any decision on any matter pertaining to town planning to the committee referred to in subsection (6) or to any other committee appointed for this purpose or to a person in its employ; and

[Para. (a) amended by s. 6 (a) of Act 61 of 1995.]

- (b) if such transitional council or transitional metropolitan substructure-
- (i) on the last day of June in any financial year has failed to approve a budget for the subsequent financial year; or
 - (ii) on the last day of April in any financial year has failed to take steps to prepare a budget for the subsequent financial year,
- the MEC may exercise any power or perform any duty conferred or imposed upon such transitional

council or transitional metropolitan substructure by this Act or any other law in relation to the approval or preparation of a budget, as the case may be.

[Sub-s. (5) amended by s. 13 (a) of Act 97 of 1996.]

(6) Notwithstanding anything to the contrary in any law contained, a transitional council or transitional metropolitan substructure referred to in subsection (1) may elect an executive committee according to a system of proportional representation from among its members to exercise such powers and perform such duties as such transitional council or transitional metropolitan substructure may determine: Provided that during the pre-interim phase it will not be necessary to elect such committee according to a system of proportional representation: Provided further that-

- (a) the transitional council or transitional metropolitan substructure shall determine the system of proportional representation and the number of members of and the quorum for the executive committee;
- (b) the executive committee shall endeavour to exercise its powers and perform its duties on the basis of consensus; and
- (c) if consensus on any matter cannot be achieved, such matter may be decided by the committee by resolution of a majority of at least two-thirds of its members, or the committee may, if a majority of the committee so decides, submit a report and recommendation on the matter to the transitional council or transitional metropolitan substructure for a decision.

[Sub-s. (6) amended by s. 6 (b) of Act 61 of 1995 and by s. 3 of Act 12 of 1996.]

(7) Any member of any transitional council or transitional metropolitan substructure referred to in subsection (1) shall be guilty of misconduct if he or she contravenes or fails to comply with any provision of the Code of Conduct for Councillors contained in Schedule 7, and his or her membership may, on application by the transitional council or transitional metropolitan substructure concerned or any member of such transitional council or transitional metropolitan substructure, be terminated by any Provincial Division of the Supreme Court within the area of jurisdiction of which such transitional council or transitional metropolitan substructure is situated.

16A Validation of certain proclamations

(1) A proclamation issued under section 10 (1) and published before 30 June 1995, shall not be invalid merely because-

- (a) it was issued or published within a period or before a date specified in section 7 or 7A;
- (b) in the circumstances contemplated in subsection (2) (a) of section 7, a matter had not been referred to an arbitration committee before or on 21 December 1994 as required by the said subsection;
- (c) in any case where a matter had been referred to an arbitration committee for its consideration and decision in terms of subsection (2) (b) of section 7, that committee had not notified the MEC of its decision before or on 12 January 1995 as required by the said subsection;

[Para. (c) amended by s. 13 (a) of Act 97 of 1996.]

- (d) the provisions of subsection (2) (a) of section 7 requiring the referral of a matter to an arbitration committee for decision in accordance with subsection (2) (b) of that section, or any requirement of the said subsection (2) (b) in so far as it relates to arbitration, was for any reason not complied with by the MEC prior to making a determination and exercising the powers conferred upon him or her by section 10 (1) as contemplated in the said subsection; or

[Para. (d) amended by s. 13 (a) of Act 97 of 1996.]

- (e) any specific provision of any agreement contemplated in section 7 (1) was not incorporated in such proclamation.

(2) The institution of any action in a court of law relating to the validity of a proclamation contemplated in subsection (1) shall not delay or suspend the implementation or operation of such proclamation.

[S. 16A inserted by s. 1 of Act 34 of 1994 and substituted by s. 15 (1) of Act 89 of 1995.]

16B

[S. 16B inserted by Proclamation R35 of 31 March 1995 and substituted by Proclamation R54 of 26 May 1995.]

NB: Proclamations R35 of 31 March 1995 and R54 of 26 May 1995, which respectively inserted and substituted s. 16B, have been repealed by s. 19 (1) of the Local Government Transition Act Second Amendment Act 89 of 1995.

17 Short title

This Act shall be called the Local Government Transition Act, 1993.

Schedule 1

PRINCIPLES AND PROCEDURES REFERRED TO IN SECTION 6

[Schedule 1 amended by Proclamation R174 of 30 November 1994, by s. 16 (1) of Act 89 of 1995 and by s. 13 (a) of Act 97 of 1996.]

1 Area of forum

(1) Subject to the provisions of this Act, a forum shall be established for each economically and historically bound area, ranging from a stand-alone town with or without satellites to a complex metropolis.

(2) Criteria for the establishment of a forum include commercial and industrial linkage, daily commuting patterns,

provision of services within the area, and the areas of jurisdiction of local government bodies, including areas of jurisdiction of such local government bodies existing before 1971, if any.

2

(1) Where a negotiating forum is not recognized by the MEC as contemplated in section 6 of this Act, the MEC may determine the area of a forum and submit it to the town clerks of the local government bodies falling within the area of such forum.

(2) In determining the area of a forum, the MEC shall take into consideration the criteria referred to in paragraph 1 (2), including-

- (a) the area of any existing forum;
- (b) the area of jurisdiction of any body or authority referred to in paragraph (j) of the definition of local government body in section 1 (1) of this Act.

(3) Upon receipt of a submission contemplated in subparagraph (1), the town clerks concerned shall-

- (a) arrange an inaugural meeting of the forum with all potential members and observers contemplated in paragraph 3: Provided that the MEC may nominate a town clerk to arrange such meeting; and
- (b) submit the submission to their respective councils for information.

(4) Within 30 days after receipt of a submission contemplated in subparagraph (1), the forum shall either confirm the area of the forum determined by the MEC, or, subject to the provisions of paragraph 1 (2), propose a new area for the forum and submit such proposal to the MEC, who may-

- (a) confirm the proposed area; or
- (b) refer the matter to the Board established in terms of section 11 (1) of this Act to investigate the matter and make written recommendations to him or her as contemplated in section 11 (6) of this Act.

(5) The decision of the MEC-

- (a) to confirm the proposed area of the forum as contemplated in subparagraph (4) (a); or
- (b) to require written recommendations of the Board as contemplated in subparagraph (4) (b),

shall be final and binding on the forum.

3 Membership of forum

(1) Membership of a forum shall be in accordance with the principle of inclusivity and representativity: Provided that the process shall continue despite the refusal or failure of any person, body or organization to participate in any such forum.

(2) Observers, who or which shall be entitled to attend and to participate fully in forum meetings, without the right to vote, may be appointed to a forum.

(3) To qualify for membership or observer status, any prospective member or observer shall, where applicable, submit in writing to the forum its constitution, a list of office-bearers and details of activities and membership as contemplated in subparagraph (4).

(4) (a) Membership of a forum shall be available to-

- (i) members of local government bodies;
- (ii) persons representing local organizations which are representative of substantial sectors of the wider community having a vested interest in the political restructuring of local government, including civic associations, residents' associations and the local structures of political parties.

(b) Bodies such as local chambers of commerce and industry, the Development Bank of Southern Africa and supplier bodies such as Eskom and Water Boards, may have observer status.

(5) Members of the forum shall be required to indicate whether they are to be regarded as part of-

- (a) the statutory component, comprising members of the existing local government bodies and persons representing bodies or organizations approved by the forum as being part of such component; or
- (b) the non-statutory component, comprising persons representing any other bodies or organizations not contemplated in item (a) having a vested interest in the political restructuring of local government and approved by the forum as being part of such component.

(6) If the forum fails to reach agreement on whether a member is to be regarded as part of the statutory or non-statutory components contemplated in items (a) and (b) of subparagraph (5), the forum shall refer the matter to the MEC for a final decision, which shall be binding on the forum.

4 Negotiating matters and objectives

(1) A forum shall negotiate on the matters referred to in section 7 (1) of this Act.

(2) A forum may generally, as local circumstances dictate, explore and propose short, medium and long term practical solutions to the problems of local government in the area of such forum to be submitted to the MEC for consideration.

5 Nomination by forum of persons for appointment as members of transitional councils

(1) For the purposes of negotiating the nomination of members of a transitional council and transitional metropolitan substructure as contemplated in section 7 (1) (b) and (c) of this Act, the statutory and the non-statutory

components of the forum shall each complete a list of potential candidates, whereupon a representative committee comprising members from each component shall meet to attempt to reach consensus on the persons to be nominated by the forum for appointment as members of any transitional council and transitional metropolitan substructure: Provided that at least half the persons nominated should be acceptable to the statutory component and at least half to the non-statutory component: Provided further that a list of additional candidates in order of preference, shall be submitted by the statutory and non-statutory components to facilitate the filling of any vacancy which may occur.

(2) (a) One half of the nominations shall include members of the local government bodies concerned and shall comprise equitably weighted representation of the local government bodies concerned which shall not disturb the pre-existing relationships within and between those local government bodies.

(b) The other half of the nominations shall comprise equitable representation of all those sectors of society which in the past did not participate in the electoral process in the area of that forum.

(3) Any person who is eligible to vote in terms of section 6 of the Constitution, read with section 15 of the Electoral Act, 1993 (Act 202 of 1993), and who is ordinarily resident within the area of jurisdiction of one of the participating local government bodies, or under law liable for the payment of assessment rates, rent, service charges or levies to one of the participating local government bodies, may be nominated as a member of any transitional council or transitional metropolitan substructure unless-

(a) he or she is a member of the National Assembly, the Senate or a provincial legislature;

(b) he or she is disqualified to be elected as a member of the National Assembly in terms of the Constitution; or

(c) he or she is an employee of one of the participating local government bodies or any other local government body: Provided that the MEC may exempt any such person if the MEC is satisfied that such exemption is in the public interest and proof of such exemption accompanies the nomination:

Provided that no person shall be nominated as a member of more than one transitional council or metropolitan substructure. [Sub-para. (3) substituted by Proclamation R174 of 30 November 1994 and by s. 16 (1) of Act 89 of 1995.]

(4) Lists of persons nominated as members of a transitional council or transitional metropolitan substructure by the forum shall be submitted to the MEC as part of an agreement contemplated in section 7 (1) of this Act.

(5) If the forum fails to reach agreement on the nomination of persons as contemplated in subparagraph (2), the forum shall refer the matter to the MEC, who may appoint a mediator or mediators to assist the forum to reach consensus.

6 Secretarial services

(1) The forum shall appoint a secretariat to provide secretarial services.

(2) The local government bodies concerned shall be jointly and severally responsible for the expenses incurred by the secretariat.

(3) The secretariat shall submit certified copies of all resolutions passed by the forum pertaining to matters referred to in section 7 (1) (a) to (c) of this Act to the MEC.

7 Procedures at meetings of forum

The standard rules of procedure contained in the Annexure may be adopted by each forum as its rules of procedure at meetings.

ANNEXURE TO SCHEDULE 1 STANDARD RULES OF ORDER FOR FORUM

[Annexure amended by s. 13 (a) of Act 97 of 1996.]

1 Chairperson

(1) The inaugural meeting of a forum shall be convened by a person nominated by the MEC for that purpose.

(2) At its first meeting the forum shall designate a chairperson or co-chairpersons, who need not be members of the forum: Provided that any reference in this annexure to the chairperson shall also be deemed to be a reference to the co-chairpersons.

(3) A chairperson may for sufficient reasons be removed from office by the forum by a vote of no confidence, and if a chairperson is so removed from office, another person shall be designated in his or her place.

(4) Whenever both the chairperson and the co-chairpersons are for any reason absent or unable to act at a meeting, the forum shall by majority of the members present at the meeting, designate a person from among its members to take the chair at that meeting.

2 Meetings

(1) Members and observers may be accompanied by officials and advisers to meetings of the forum, hereinafter referred to as 'participants', and such persons may with the consent of the chairperson participate in the proceedings, without having the right to vote.

(2) Meetings of the forum shall be open to the media and the public, unless the forum in respect of a particular occasion otherwise decides.

(3) If negotiations on any matter are contemplated, any member may request that the meeting go into committee and, if the forum so agrees, the meeting shall comply.

(4) The agenda for any meeting of the forum may be made available to the public or the media before or at that meeting, but the secretariat may at its discretion withhold any particular document from the press and the public unless otherwise directed by the chairperson or the meeting.

(5) The forum shall, from time to time, set a programme of dates, times and venues for its ordinary meetings.

(6) Leave of absence from any meeting may be applied for by or on behalf of a member or observer either before or at the meeting concerned.

3 Notices of meetings

(1) The secretariat shall give written notice of a meeting to each member and observer.

(2) The notice shall set out the time, date and place of such meeting and shall include an agenda and such other information as the secretariat may deem necessary to enable the participants to prepare for the meeting.

(3) Meetings shall be convened on not less than seven calendar days' notice.

(4) Not fewer than one quarter of the members of the forum may submit to the secretariat a written request for a special meeting to be convened on the grounds set out in the request, and the secretariat shall within seven calendar days after receipt of such request issue a notice convening such a meeting.

(5) (a) Service of such notices shall be by hand or by telefacsimile to numbers supplied to the secretariat by members: Provided that notices may be mailed to members whose offices are situated more than 10 kilometres from the secretariat's office and who have not provided telefacsimile addresses.

(b) Changes of address shall be notified to the secretariat in writing.

(6) The accidental omission to notify any member or observer shall not affect the validity of the meeting concerned.

4 Quorum

(1) The quorum for a meeting of the forum shall be at least half the total number of members of such forum.

(2) Whenever during a meeting there is no quorum, the chairperson shall suspend proceedings for 20 minutes, and if at the end of that period there is still no quorum, he or she may declare the meeting to be adjourned.

5 Attendance register

The secretariat shall keep an attendance register, in which every participant present at a meeting shall sign his or her name.

6 Order of business

(1) The order of business at a meeting shall be as follows:

(a) Opening;

(b) application for leave of absence;

(c) statements and communications by the chairperson;

(d) finalizing the agenda, including decisions on the release of documents to the media and the public;

(e) confirmation of minutes of previous meeting;

(f) matters arising from the minutes (if not covered by agenda item);

(g) consideration of report by a joint technical committee referred to in paragraph 12, including its working groups and task teams (if any);

(h) consideration of any matters of common concern or interest relating to the area of the forum;

(i) matters of urgency or necessity in terms of subparagraph (4);

(j) possible press statement.

(2) The chairperson may give preference to any item on the agenda with the consent of the meeting.

(3) No business shall be transacted at a meeting other than that specified in the agenda relating thereto.

(4) The chairperson may as a matter of urgency or necessity accept a request to discuss a matter which request could not have been notified to the secretariat in terms of paragraph 7, in which case a properly motivated written request in this regard shall be directed to the secretariat a reasonable time before the meeting.

(5) The chairperson shall rule on the acceptability of any urgent request, and on the need for other participants to be given appropriate time to prepare for discussion thereof.

7 Notice of matters for discussion

(1) Written notice of any matter contemplated in paragraph 6 (1) (h) shall be given to the secretariat not less than three days prior to the date of each meeting of the forum and such notice shall be sent by the secretariat to each member in terms of paragraph 3.

(2) A notice of matters for discussion shall deal with one matter only and shall be relevant, which relevance shall be determined by the chairperson at the meeting where the matter is to be considered.

8 Proposals during course of meeting

(1) The following proposals may also be made during a meeting:

(a) To amend a motion, proposal or recommendation of a joint technical committee or a working group;

(b) that the forum adjourns;

(c) that a debate be adjourned;

- (d) that a matter be referred back to the joint technical committee or a working group;
- (e) that consideration of the matter be deferred or held over;
- (f) that a decision be taken on the matter under consideration;
- (g) that it be accepted that consensus cannot be reached;
- (h) that the meeting go into committee, and thereby exclude the media and the public;
- (i) that the media and the public be allowed back into the meeting.

(2) Every proposal in terms of subparagraph (1) shall be seconded.

(3) Any business uncompleted at the adjournment of a meeting shall be dealt with at the next meeting unless the forum decides otherwise or the chairperson convenes a special meeting to dispose of such business.

(4) Any proposal to refer a matter back for reconsideration shall indicate to which body the matter shall be referred and the aspect on which reconsideration is required.

9 Proceedings at meetings

(1) The chairperson shall control and conduct a meeting and may for such purpose issue directions to any participant or person, and at his or her discretion adjourn the meeting at any time.

(2) Whenever the chairperson speaks during a meeting, any participant then speaking or intending to speak shall be silent and all persons present shall be silent so that the chairperson may be heard without interruption.

(3) A participant who speaks shall confine his or her speech strictly to the motion or proposal under discussion or to an explanation or point of order and no discussion shall be allowed which will anticipate any matter on the agenda.

(4) Any participant may ask the chairperson for permission to address the meeting-

- (a) on a point of order with a view to calling attention to any departure from the prescribed procedure; or
- (b) in personal explanation, in order to explain some material part of his or her former speech which may have been misunderstood,

and any participant so asking shall be heard forthwith unless the chairperson rules the point of order or explanation to be inadmissible.

(5) (a) If a participant misconducts himself or herself, behaves in an unseemly manner or obstructs the business of any meeting or challenges any ruling of the chairperson, the chairperson shall direct such person to conduct himself or herself properly and if speaking to discontinue his or her speech.

(b) In the event of a persistent disregard by any person of the directions of the chairperson, the chairperson shall direct such person to retire from the place where the meeting is being held, for the remainder of the meeting, failing which the chairperson may direct that he or she be removed from such place.

(6) Any other person who misconducts himself or herself, behaves in an unseemly manner or interrupts proceedings at any meeting, shall, if the chairperson so directs, leave the place where the meeting is being held, failing which the chairperson may direct that he or she be removed from such place.

(7) Any interpretation by the chairperson of these Rules of Order shall, if any participant present so requests, be recorded in the minutes.

10 Decision-making

(1) In carrying out its functions, the forum shall seek to achieve consensus.

(2) Should consensus not be achieved on any matter at a subsequent meeting, such matter shall, unless otherwise provided for in this Act, be decided by a concurrent majority of two-thirds of both the statutory and non-statutory components of the forum.

(3) Each member shall be entitled to one vote.

(4) Where a vote has to be taken on any matter, such vote shall be by a show of hands unless any member requests a secret ballot.

11 Minutes

(1) The secretariat shall keep an attendance register, and proper minutes or other appropriate records of the forum's decisions and transactions in a minute book and other appropriate books, and copies of such minutes shall, unless other arrangements are made with any member, be sent to each member as soon as possible after each meeting, but at the latest with the agenda for the next meeting.

(2) A copy of minutes certified by the chairperson as a true copy or extract of minutes, confirmed by the forum, shall constitute *prima facie* proof of the accuracy thereof.

12 Joint Technical Committee and working groups

(1) A standing committee to be known as the Joint Technical Committee (hereinafter referred to as JTC) may be appointed by the forum from both the statutory and non-statutory components to advise and make recommendations in writing to the forum regarding any matter referred to the JTC by the forum.

(2) The JTC shall attempt to reach consensus on all matters, but where this cannot be achieved, any dissenting views shall be recorded.

(3) The JTC shall designate, and may remove from office, a chairperson by resolution passed by a majority of members present at a meeting, each member having one vote.

(4) The JTC may, subject to review by the forum, co-opt any person to serve on it for one or more meetings or part of a meeting.

(5) The JTC or, if there is no JTC, the forum, may establish working groups, task teams and subcommittees.

(6) The JTC shall meet as often as is necessary and shall determine the dates of meetings.

(7) The chairperson of the JTC may, and shall at the request of two members, call a special meeting of the JTC.

(8) Meetings of the JTC and of its working groups, task teams and sub-committees shall not be open to the public or the media.

(9) Notice of a JTC meeting shall be given by the secretariat to members at least 48 hours prior to the meeting, in the manner referred to in paragraph 3 (2).

(10) A majority of all the members represented on the JTC shall constitute a quorum.

(11) The JTC shall regulate its own procedure, which shall as far as practicable be the same as that of the forum.

Schedule 2

POWERS AND DUTIES OF METROPOLITAN COUNCILS REFERRED TO IN SECTION 10C (1)

[Schedule 2 substituted by s. 8 of Act 97 of 1996.]

1 Levies, Payments and Contributions

A metropolitan council may-

- (a) at rates determined by the council with the concurrence of the MEC responsible for Finance with the concurrence of the Minister of Finance, levy and claim the levies referred to in section 12 (1) (a) of the Regional Services Councils Act, 1985 (Act 109 of 1985), or section 16 (1) (a) of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990), as the case may be;
- (b) claim payments from any metropolitan local council to cover the actual costs of any service performed or rendered on behalf of or to such metropolitan local council;
- (c) determine and claim an equitable contribution from all metropolitan local councils: Provided that such contribution shall be determined, and the utilisation of the sum total thereof shall be, as prescribed.

2 Grants and Transfers

The receipt, allocation and distribution of grants in accordance with an objective formula, or in the case of a specific transfer as determined by the Minister.

3 Integrated Development Plan

A metropolitan council shall, taking into account the development needs and priorities as determined by metropolitan local councils -

- (a) formulate and implement a metropolitan integrated development plan incorporating metropolitan land use planning, transport planning, infrastructure planning and the promotion of integrated economic development; and
- (b) co-ordinate and monitor local integrated development plans.

4 Water

The bulk supply of water, including-

- (a) the conservation of water;
- (b) the purification of water;
- (c) the distribution of water other than local supply reticulation;
- (d) the primary bulk supply to local supply points;
- (e) the installation, positioning and maintenance of bulk meters;
- (f) the determination of bulk tariffs;
- (g) the development and operation of a bulk water supply and distribution strategy for its area of jurisdiction after consultation with the metropolitan local council concerned;
- (h) the establishment and operation of a water co-ordinating system in association with external bulk suppliers;
- (i) the implementation of a bulk water supply and distribution plan for its area of jurisdiction;
- (j) the establishment and maintenance of an integrated bulk supply control and monitoring system for its area of jurisdiction;
- (k) the determination of a uniform base for the structuring of user tariffs.

5 Sewerage

Bulk sewage purification works and main sewage disposal including-

- (a) the formulation and implementation of policy relating to sewerage functions;
- (b) the design, construction, operation and maintenance of trunk mains and bulk sewage pump stations;
- (c) bulk sewage collection and disposal;
- (d) the planning of bulk conveyance of sewage and industrial effluent and the treatment thereof at treatment plants;
- (e) the determination and maintenance of a local development guide plan or master plan for bulk conveyance

- and treatment of sewage and industrial effluent;
- (f) the implementation of a master plan of bulk conveyance and treatment of sewage and industrial effluent;
- (g) the establishment and management of a co-ordinating system for the bulk sewerage system, with the concurrence of the other role-players;
- (h) the establishment of a system to monitor the flows in the bulk conveyance system;
- (i) the provision, operation and maintenance of bulk sewage and effluent infrastructure, including sludge disposal;
- (j) the determination of a uniformly structured bulk tariff for the purification and bulk conveyance of sewage;
- (k) the development of a uniform basis for the structuring of user tariffs.

6 Electricity

Subject to the provisions of any other law, the bulk supply of electricity, including the transmission and distribution and where applicable, the generation of electricity to reticulators in terms of any law.

7 Roads

The construction and maintenance of arterial roads that transcend more than one metropolitan local council boundary, including-

- (a) roads with significant traffic volumes;
- (b) roads forming major public transport corridors;
- (c) roads used extensively by traffic from outside the metropolitan local council within which such roads are situated;
- (d) roads in respect of which access and egress have been limited in accordance with a law;
- (e) roads of a major nature linking significant urban growth points or potential growth points;
- (f) the construction and maintenance of stormwater drainage systems and infrastructure that transcend more than one metropolitan local council boundary,

but excluding national roads, toll roads, provincial freeways and provincial arterial roads.

8 Passenger Transport Services

- (a) The provision and regulation of passenger transport services.
- (b) The co-ordination of passenger transport services after consultation with the metropolitan local councils concerned.
- (c) The provision and control of public transport facilities.

9 Traffic Matters

- (a) The co-ordination and determination of policy for traffic matters which affect more than one metropolitan council.
- (b) The provision and control of road traffic engineering which affects more than one metropolitan local council.
- (c) Traffic law enforcement, if so requested by the metropolitan local council concerned.

10 Fresh Produce Markets

The establishment, conduct and control of fresh produce markets which affect more than one metropolitan local council.

11 Waste Disposal Facilities

- (a) The determination of a waste disposal strategy.
- (b) The identification of sites for the placing of waste disposal facilities.
- (c) The establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one metropolitan local council.

12 Cemeteries and Crematoria

The establishment, conduct and control of cemeteries and crematoria utilised by more than one metropolitan local council.

13 Airports

The establishment and operation of airports, excluding national and international airports and landing strips.

14 Sport Facilities

The establishment, conduct and control of sport facilities of international standards.

15 Promotion of Tourism

The promotion of tourism.

16 Municipal Health Services

Subject to any other law, the planning, evaluation, monitoring and co-ordination of municipal health services.

17 Abattoirs

The establishment, management and control of metropolitan abattoirs.

18 Fire-fighting Services and Disasters

The provision and control of fire-fighting services and the planning for and management of disasters.

19 Libraries

The establishment, management and control of libraries serving the metropolitan area.

20 Museums

The establishment, management and control of museums.

21 Environmental Management

The co-ordination of environmental affairs.

22 Municipal Law Enforcement Agency

The establishment and control of municipal law enforcement agencies, subject to the South African Police Service Act, 1995 (Act 68 of 1995).

Schedule 2A**POWERS AND DUTIES OF METROPOLITAN LOCAL COUNCILS REFERRED TO IN SECTION 10C (2)**

[Schedule 2A inserted by s. 9 of Act 97 of 1996.]

1 Recovery of Costs

The claiming of payments from a metropolitan council to cover the actual costs of any service performed or rendered on behalf of or to such council.

2 Integrated Development Plan

A metropolitan local council shall formulate and implement a local integrated development plan, incorporating local land use planning, transport planning, infrastructure planning and the promotion of integrated local economic development, in accordance with the metropolitan integrated development plan.

3 Water

Water reticulation.

4 Sewerage

Sewage disposal and the provision of a sewerage system.

5 Electricity

The retail reticulation of electricity.

6 Roads

The construction and maintenance of roads and local stormwater drainage systems.

7 Traffic Matters

- (a) Traffic law enforcement.
- (b) The testing of vehicles and drivers.
- (c) Matters pertaining to road safety.

8 Waste Disposal

The disposal of waste.

9 Cemeteries and Funeral Parlours

The establishment and control of cemeteries and funeral parlours.

10 Airports

The establishment and operation of airports, excluding national or international airports and landing strips.

11 Libraries

The establishment and operation of libraries.

12 Amusement Facilities and Beaches

The establishment, conduct and control of amusement facilities and the control of beaches.

13 Public nuisances

The control of public nuisances.

14 Environmental Affairs

The management and control of environmental affairs.

15 Tourism

The promotion of tourism.

16 Municipal Health Services

The provision of municipal health services.

17 Billboards and Advertisements

The control of billboards and the display of advertisements in public places.

18 Building Control

The control of building activities.

19 Cleansing

The provision of cleansing services in streets and public places.

20 Business Licensing

The licensing and control of places selling food.

21 Animals

The licensing and control of animals as well as the provision and control of facilities for the accommodation, impounding, care and burial of animals.

22 Markets

The establishment and control of markets, excluding fresh produce markets.

23 Pontoons, Ferries, Jetties, Piers and Harbours

The provision and control of pontoons, ferries, jetties, piers and harbours other than major ports.

24 Street Trading

The control of street trading.

25 Lighting

The lighting of streets and public places.

26 Public Places

The management and control of public places and gatherings in public places.

27 Fireworks

The control of fireworks.

28 Child Care Facilities

Management of child care facilities.

29 Municipal Law Enforcement Agency

The establishment and control of municipal law enforcement agencies, subject to the South African Police Service Act, 1995 (Act 68 of 1995).

Schedule 3

DELIMITATION OF WARDS REFERRED TO IN SECTION 8 (2)

The area of jurisdiction of any transitional local council and transitional metropolitan substructure shall be divided into wards in accordance with the applicable laws: Provided that where the area of jurisdiction of any such transitional local council or transitional metropolitan substructure includes-

- (a) the area of jurisdiction of any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961); and
- (b) any other area not falling within the area of jurisdiction of the institution or body referred to in paragraph (a),

no area referred to in paragraph (a) or (b) shall be allocated less than half the total number of wards of such transitional local council or transitional metropolitan substructure: Provided further that for the purposes of delimitation of wards in terms of section 8 (2) of this Act, no area referred to in paragraph (a) shall include any area for which a local government body referred to in paragraphs (a), (b) and (c) of the definition of local government body has been established.

Schedule 4

PRINCIPLES REFERRED TO IN SECTIONS 9 (4) AND 10L (3)

[Heading substituted by s. 10 of Act 97 of 1996.]

[Schedule 4 amended by Proclamation R174 of 30 November 1994, by Proclamation R35 of 31 March 1995, by s. 17 (1) of Act 89 of 1995, by s. 4 of Act 12 of 1996 and by s. 13 (a) of Act 97 of 1996.]

1. Any natural person who is -

- (a) of or over the age of 18 years;
- (b) (i) a South African citizen; or
(ii) permanently resident in the Republic and who is in possession of an identity document contemplated in paragraph 5;
- (c) not subject to any disqualification mentioned in section 16 of the Electoral Act, 1993 (Act 202 of 1993); and
- (d) ordinarily resident within the area of jurisdiction of a local government, or under law liable for the payment of assessment rates, rent, service charges or levies to the local government concerned, or to a local government, the area of jurisdiction of which falls wholly or partly within the area of jurisdiction of the local government for which an election is to be held,

shall be entitled to be included in the voters' roll of the local government for which an election is to be held and shall thereupon be entitled to vote in an election for members of the council of such local government: Provided that any person shall be entitled to exercise only one vote for any local government: Provided further that the exercise of a vote as contemplated in this paragraph may entail the marking of two or three ballot papers representing the proportional and ward components of a vote referred to in paragraphs 7 and 8.

[Para. 1 substituted by Proclamation R174 of 30 November 1994, by Proclamation R35 of 31 March 1995 and by s. 17 (1) (a) of Act 89 of 1995 and amended by s. 4 (a) of Act 12 of 1996.]

- 2. Voters' rolls shall be prepared by the local government concerned and divided according to wards delimited as contemplated in section 8 (2) of this Act.**
- 3. A voters' roll shall lie for inspection, but the onus to be enrolled as a voter shall rest on the voter concerned.**

4. Only a competent court shall be entitled to make alterations to an approved voters' roll, which shall be updated at regular prescribed intervals.
5. Identification for voting purposes shall be by production of a voter's eligibility document referred to in paragraphs (a), (c) and (d) of the definition of 'voter's eligibility document' in section 1 of the Electoral Act, 1993.
[Para. 5 substituted by Proclamation R174 of 30 November 1994 and by s. 17 (1) (b) of Act 89 of 1995.]
6. Any person who is entitled to be included in the appropriate voters' roll as contemplated in paragraph 1, shall be entitled to be nominated and elected as a member of the council of the local government unless-
- (a) he or she is a member of the National Assembly, the Senate or a provincial legislature;
[Sub-para. (a) substituted by Proclamation R174 of 30 November 1994 and by s. 17 (1) (c) of Act 89 of 1995.]
 - (b) he or she is disqualified from being elected as a member of the National Assembly in terms of section 42 (1) (a), (b), (c) or (d) of the Constitution of the Republic of South Africa, 1993;
[Sub-para. (b) substituted by s. 7 (a) of Act 61 of 1995.]
 - (c) he or she is disqualified to be elected by any competent court;
 - (d) at 15:00 on the day immediately preceding nomination day, he or she is indebted to the local government concerned or a local government, the area of jurisdiction of which falls wholly or partly within the area of jurisdiction of the local government for which an election is to be held, in respect of any assessment rates, rent, service charges or any other monies for a period longer than three months; or
[Sub-para. (d) substituted by s. 4 (b) of Act 12 of 1996.]
 - (e) he or she is an employee of the local government concerned or any other local government: Provided that the MEC may exempt any such person if the MEC is satisfied that such exemption is in the public interest and proof of such exemption accompanies the nomination.
- 6A. Subject to the provisions of paragraph 8, no person nominated for election as a member of a transitional council or metropolitan substructure shall be nominated for election as a member of any other transitional council or metropolitan substructure.
[Para. 6A inserted by Proclamation R174 of 30 November 1994 and by s. 17 (1) (d) of Act 89 of 1995.]
7. Sixty per cent of the members of a transitional local council or a transitional metropolitan substructure shall be elected to represent wards of such transitional local council or transitional metropolitan substructure and forty per cent of the members shall be elected according to a system of proportional representation: Provided that if such wards are represented by more than one member, all such wards shall be represented by the same number of members.
[Para. 7 substituted by s. 7 (b) of Act 61 of 1995.]
8. Forty per cent of the members of a transitional metropolitan council shall be elected according to the system of proportional representation contemplated in paragraph 7, and sixty per cent of the members shall be elected as prescribed by regulation under section 12 by the transitional metropolitan substructures from among their members on a *pro rata* basis according to the number of registered voters in the areas of jurisdiction of such transitional metropolitan substructures: Provided that each such transitional metropolitan substructure shall be entitled to at least one representative.
[Para. 8 substituted by s. 17 (1) (e) of Act 89 of 1995.]

Schedule 5

CRITERIA REFERRED TO IN SECTION 11 (2)

1. The chairperson of the Board shall be a person with extensive experience in law or matters relating to local government.
2. The other members of the Board shall jointly have knowledge of-
 - (a) rural, town and regional planning;
 - (b) development economics, including development needs of local communities;
 - (c) municipal finance;
 - (d) municipal services and administration; and
 - (e) other disciplines and skills as may be necessary.
3. The membership of the Board shall be structured in such a manner as to be balanced, representative, non-racial and gender inclusive.

Schedule 6

CRITERIA REFERRED TO IN SECTION 10J (6) (b)

[Heading substituted by s. 11 (a) of Act 97 of 1996.]

[Schedule 6 amended by s. 11 (b) of Act 97 of 1996.]

1. Topographical and physical characteristics of the area concerned.
2. Population distribution within the area concerned.
3. Existing demarcation of areas pertaining to local government affairs and services, including existing areas of local government bodies and areas existing before 1971 as areas of such local government bodies (if any) as well as areas of regional services councils and joint services boards.
4. Existing and potential land usage, town and transport planning, including industrial, business, commercial and

residential usage and planning.

5. Economy, functionality, efficiency and financial viability with regard to the administration and rendering of services within the area concerned.
6. Development potential in relation to the availability of sufficient land for a reasonably foreseeable period to meet the spatial needs of the existing and potential residents of the proposed area for their residential, business, recreational and amenity use.
7. Interdependence of and community of interest between residents in respect of residency, work, commuting and recreation.
8. The integrated urban economy as dictated by commercial, industrial and residential linkages.
9. The will of the local community.

Schedule 7

CODE OF CONDUCT FOR COUNCILLORS REFERRED TO IN SECTION 16 (7)

1 Attendance of meetings

A councillor shall attend each meeting of the council of which he or she is a member or of any committee of such council to which he or she is appointed or elected, except where leave of absence has been granted to him or her in terms of the applicable law.

2 Misleading or influencing council, and certain other acts prohibited

No councillor shall-

- (a) mislead or attempt to mislead the council of which he or she is a member in its consideration of and decision on any matter serving before it;
- (b) influence or attempt to influence the council of which he or she is a member in its consideration of and decision on any matter serving before it so as to gain some direct or indirect benefit, whether in money or otherwise, for himself or herself or any other person to whom he or she is related or any other person or body with whom or which he or she is associated;
- (c) directly or indirectly encourage, advocate, incite or participate in the taking of any unlawful decision by the council of which he or she is a member; or
- (d) directly or indirectly encourage, advocate, incite or participate in any debate, consultation, meeting or decision with any other person or body the aim or effect of which would be the abrogation by the council of which he or she is a member, of any right in its favour or the breach by such council of any agreement or the breach by any other person or body of any agreement with such council or any other breach or loss of any right or the neglect of any obligation to the extent that the local authority concerned suffers loss or is in any way prejudiced or improperly or unlawfully burdened with any obligation.

3 Pressure on employees prohibited

No councillor shall, directly or indirectly-

- (a) coerce or put any pressure on any employee of the council of which he or she is a member to insert in or to omit from any document prepared by such employee, any fact, view or information, or to frame a recommendation in any such document in a particular manner; or
- (b) instruct or order any employee of the council of which he or she is a member not to implement any decision of that council or any decision of any committee of that council or to implement any such decision contrary to the intent and purpose thereof.

4 Unauthorized disclosure of information prohibited

No councillor shall, by himself or herself or through the agency of any other person, disclose to any unauthorized person or body or the representative of such person or body, any privileged or confidential information.

5 Solicitation for reward, and acceptance of gifts and favours prohibited

No councillor shall, directly or indirectly-

- (a) request, solicit or demand from any person or body any direct or indirect reward or favour; or
- (b) accept any gift, reward or favour,

whether in money or otherwise, as a consideration for voting in a particular manner on any matter before the council of which he or she is a member, or from refraining from voting on any matter, or for the purpose of persuading or convincing such council in regard to the exercise or performance of any power or duty that such council is required to exercise or perform, or for the disclosure of any privileged or confidential information to any unauthorized person or body or the representative of such person or body.

6 Intervention in administration of council prohibited

No councillor shall-

- (a) intervene directly or through the agency of any other person in the management or administration of any department, branch, section or division of the council of which he or she is a member;
- (b) directly or through the agency of any other person, issue or attempt to issue an executive order to any employee of the council of which he or she is a member; or

- (c) directly or indirectly encourage, advocate, incite or participate in any debate, decision or act the result of which would be to cause or contribute to maladministration within the council of which he or she is a member or in any department, branch, section or division of such council.

7 Appropriation or misuse of council property prohibited

(1) No councillor shall-

- (a) appropriate for his or her personal use or benefit or for the use or benefit of any other person to whom he or she is related or any other person or body with whom or which he or she is associated, any movable or immovable property or asset owned, controlled or managed by the council of which he or she is a member; or
- (b) unlawfully or improperly acquire any benefit from or right, title or interest to, in, or over such property or asset.

(2) No councillor shall use-

- (a) municipal office facilities; or
- (b) municipal equipment, including telephones or motor vehicles,

for his or her personal use or for the conducting of his or her business affairs outside his or her authorized functions as a councillor.

8 Duties of councillor

Whenever any member of any council becomes aware of any contravention of or failure to comply with any provision of this Code of Conduct, or whenever any allegation or statement is made to him or her in writing, to the effect that any member of the council of which he or she is a member has allegedly contravened or failed to comply with any provision of this Code of Conduct, he or she shall forthwith inform the town clerk thereof in writing, setting out the particulars of any facts of which he or she is aware or the particulars of any statements or allegations made to him or her.

9 Duties of town clerk

(1) Whenever the town clerk of any council becomes aware of any contravention of or failure to comply with any provision of this Code of Conduct, or whenever any allegation or statement is made to him or her in writing, to the effect that any member of the council has allegedly contravened or failed to comply with any provision of this Code of Conduct, he or she shall-

- (a) investigate the facts and circumstances;
- (b) obtain the written comments of the councillor concerned; and
- (c) if he or she is satisfied that *prima facie* a contravention of or failure to comply with any provision of this Code of Conduct has occurred, he or she shall submit a report thereon to the council:

Provided that if the councillor concerned does not furnish the town clerk with his or her written comments as contemplated in item (b), within a reasonable time after being requested to do so, the town clerk shall proceed to submit a report to the council as contemplated in item (c).

(2) The town clerk of every council shall ensure-

- (a) that each member of the council shall upon being elected as a member be furnished with a copy of this Code of Conduct and every amendment thereof; and
- (b) that a copy of this Code of Conduct is available in every room or place where the council concerned or any committee of such council meets.

Schedule 8

RESOLUTION OF DISPUTES CONTEMPLATED IN SECTION 10C (7)

[Schedule 8 added by s. 12 of Act 97 of 1996.]

1. If a dispute arises, the municipalities concerned shall jointly or severally have the right to declare a dispute by giving notice in writing to this effect to the other municipality or municipalities, and thereafter the municipalities concerned or their representatives shall attempt to settle the dispute by consensus within seven days of the dispute having been declared and should they fail to resolve the dispute, the municipalities may agree to attempt to resolve the dispute by mediation within a further period of 14 days.

2. Mediation means a process whereby-

- (a) the municipalities concerned agree on a mediator;
- (b) the mediator familiarises himself or herself with the position held by both municipalities and how the possible outcome might affect all other interested municipalities;
- (c) the mediator and the municipalities or their representatives discuss the dispute at a meeting attended by the municipalities in dispute;
- (d) the municipalities thereafter attempt to resolve the dispute by consensus; and
- (e) the municipalities share the mediator's costs equally.

3. Where no consensus can be reached by a municipality as to whether a dispute shall be declared with another municipality a decision shall be taken by a majority of all the members of the council.

4. If the municipalities are unable to resolve the dispute by consensus, the dispute shall be referred to a single

arbitrator to be agreed upon between the municipalities, or failing such agreement within 14 days, to an arbitrator who shall be an advocate or attorney of not less than five years' experience as such, nominated on the application of either municipality, by the MEC.

5. The provisions of the Arbitration Act, 1965 (Act 42 of 1965), shall with the necessary changes apply to an arbitration contemplated in item 4. The decision of the arbitrator shall be final and binding on the municipalities.

6. The arbitrator shall take into account the effect or impact of his or her decision on the municipalities which may be affected thereby.

7. The municipalities shall share all costs in the arbitration process equally.